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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–093–2]

Golden Nematode; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the golden nematode regulations by adding a field in Cayuga County, NY, to the list of generally infested regulated areas for golden nematode. That action was necessary to prevent the artificial spread of golden nematode to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

The golden nematode (*Globodera rostochiensis*) is a destructive pest of potatoes and other solanaceous plants. Potatoes cannot be economically grown on land which contains large numbers of the nematode. The golden nematode has been determined to occur in the United States only in parts of New York.

The golden nematode regulations (contained in 7 CFR 301.85 through 301.85–10 and referred to below as the regulations) list two entire counties and portions of seven other counties in the State of New York as regulated areas and restrict the interstate movement of regulated articles from those areas. Such restrictions are necessary to prevent the artificial spread of the golden nematode to noninfested areas of the United States.

In an interim rule effective and published in the **Federal Register** on November 8, 2004, (69 FR 64639–64641, Docket No. 04–093–1), we amended the § 301.85–2a of the regulations by adding a field in Cayuga County, NY, to the list of generally infested regulated areas.

Comments on the interim rule were required to be received on or before January 7, 2005. We received one comment by that date, from a private citizen. The commenter objected to statements in the interim rule's economic analysis that treatment costs are borne by APHIS, stating that it is the taxpayer, and not APHIS, that actually bears those costs. The commenter further objected to the use of taxpayer funds for the golden nematode program, stating that producers should be responsible for the costs of the program. As this comment has no bearing on the action taken in the interim rule (*i.e.*, the addition of one field to the list of generally infested areas), no changes to the interim rule are indicated.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 69 FR 64639–64641 on November 8, 2004.

Done in Washington, DC, this 8th day of February 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–2798 Filed 2–11–05; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1221]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC to delete the reference to the Birmingham branch office of the Federal Reserve Bank of Atlanta and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Atlanta. These amendments will ensure that the information in appendix A accurately describes the actual structure of check processing operations within the Federal Reserve System.

DATES: The final rule will become effective on March 26, 2005.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a local check than by a nonlocal check. A check drawn on a bank is considered local if it is payable by or at a bank

[1] For purposes of Regulation CC, the term ''bank'' refers to any depository institution, including commercial banks, savings institutions, and credit unions.

located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Checks that do not meet the requirements for local checks are considered nonlocal.

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office for check processing purposes. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

As explained in detail in the Board's final rule published in the **Federal Register** on September 28, 2004, the Federal Reserve Banks have decided to reduce further the number of locations at which they process checks.[2] This notice sets forth the first in a series of appendix A amendments related to that decision, and the Board will issue separate notices for each phase of the restructuring.[3]

As part of the restructuring process, the Birmingham branch office of the Federal Reserve Bank of Atlanta will cease processing checks on March 26, 2005. As of that date, banks with routing symbols currently assigned to the Birmingham branch office for check processing purposes will be reassigned to the Atlanta Reserve Bank's head office. As a result of this change, some checks that are drawn on and deposited at banks located in the Birmingham and Atlanta check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules.

To assist banks in identifying local and nonlocal banks, the Board accordingly is amending the lists of routing symbols assigned to Sixth District check processing offices to conform to the transfer of operations from Birmingham to Atlanta. To coincide with the effective date of the underlying check processing changes, the amendments are effective March 26, 2005. The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice also will enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.[4] The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of Governors, however, intends to issue similar notices at least sixty days prior to the elimination of check operations at some other Reserve Bank offices, as described in the September 2004 **Federal Register** document.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of this final rule. The revisions to the appendix are technical in nature, and the routing symbol revisions are required by the statutory and regulatory definitions of ''check-processing region.'' Because there is no substantive change on which to seek public input, the Board has determined that the § 553(b) notice and comment procedures are unnecessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. This technical amendment to appendix A of Regulation CC will delete the reference to the Birmingham branch office of the Federal Reserve Bank of Atlanta and reassign the routing symbols listed under that office to the head office of the Federal Reserve Bank of Atlanta. The depository institutions that are located in the affected check processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, because all paperwork collection procedures associated with Regulation CC already are in place, the Board anticipates that no additional burden will be imposed as a result of this rulemaking.

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001–4010, 12 U.S.C. 5001–5018.

■ 2. The Sixth Federal Reserve District routing symbol list in appendix A is revised to read as follows:

Appendix A To Part 229—Routing Number Guide To Next-Day Availability Checks and Local Checks

* * * * *

SIXTH FEDERAL RESERVE DISTRICT

[Federal Reserve Bank of Atlanta]

Head Office	
0610	2610
0611	2611
0612	2612
0613	2613
0620	2620
0621	2621
0622	2622
Jacksonville Branch	
0630	2630
0631	2631
0632	2632
0660	2660
0670	2670
Nashville Branch	
0640	2640
0641	2641
0642	2642
New Orleans Branch	
0650	2650
0651	2651
0652	2652
0653	2653
0654	2654
0655	2655

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the

[2] *See* 69 FR 57837, September 28, 2004.

[3] In addition to the general advance notice of future amendments provided by the Board, and the Board's notices of final amendments, the Reserve Banks are striving to inform affected depository institutions of the exact date of each office transition at least 120 days in advance. The Reserve Banks' communications to affected depository institutions are available at *http://www.frbservices.org.*

[4] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

Secretary of the Board under delegated authority, February 7, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–2674 Filed 2–11–05; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19038; Directorate Identifier 2004–SW–24–AD; Amendment 39–13964; AD 2005–03–08]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, BA, B1, B2, B3, C, D, D1, and EC130 B4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS350B, BA, B1, B2, B3, C, D, D1, and EC130 B4 helicopters that requires removing and modifying the fuel bleed lever. This amendment is prompted by some cases of loss of the fuel bleed lever in flight. If the tension of the control cable is too low, the cable may vibrate out of its notch, resulting in the fuel bleed lever separating from the hinge. The actions specified by this AD are intended to prevent a fuel bleed lever from separating and striking the tail rotor blade (blade), resulting in damage to or loss of a blade, and subsequent vibration and loss of control of the helicopter.

DATES: Effective March 21, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 2005.

ADDRESSES: You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. You may examine this information 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.*

Examining the Docket

You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or at the Docket Management System (DMS), U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified Eurocopter model helicopters was published in the **Federal Register** on September 8, 2004 (69 FR 54250). That action proposed to require removing and modifying the fuel bleed lever.

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 EC 130 and the AS 350 helicopters. The DGAC advises of some cases of loss of the fuel bleed lever in flight.

Eurocopter has issued Alert Service Bulletin (ASB) Nos. 28A001 for the Model EC130 B4 and 28.00.16 for the civil version of the Model AS350B, BA, BB, B1, B2, B3, D, and the military version of the Model L1 helicopters, both dated March 3, 2004. The ASB's specify removing and modifying the fuel bleed lever. The DGAC classified these ASB's as mandatory and issued AD Nos. F–2004–034 for the Model EC130 B4 pre-MOD 073239 and F–2004–033 for the Model AS350B, BA, BB, B1, B2, B3, and D helicopters, pre-MOD 073239, both dated March 17, 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. The FAA has 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.

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 624 helicopters of U.S. registry. It will take about 1 work hour per helicopter to modify the fuel bleed lever at an average labor rate of $65 per work hour and it will cost about $300 for consumable materials. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $227,760.

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 the 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 an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–03–08 Eurocopter France: Amendment 39–13964. Docket No. FAA–2004–19038; Directorate Identifier 2004–SW–24–AD.

Applicability: Model AS350B, BA, B1, B2, B3, C, D, D1, and EC130 B4 helicopters, pre-MOD 073239, with fuel bleed lever, part number (P/N) 350A55104320, installed, certificated in any category.

Compliance: Required within 6 months for the Model EC130 B4 helicopters and within 100 hours time-in-service or 6 months, whichever comes first, for the Model AS350B, BA, B1, B2, B3, C, D, and D1 helicopters, unless accomplished previously.

To prevent a fuel bleed lever from separating and striking the tail rotor blade (blade), resulting in damage to or loss of a blade, and subsequent vibration and loss of control of the helicopter, do the following:

(a) Remove and modify the fuel bleed lever, P/N 350A55104320, by following the Accomplishment Instructions, paragraph 2.B., of Eurocopter Alert Service Bulletin Nos. 28A001 for the Model EC130 B4 and 28.00.16 for the Model AS350B, BA, B1, B2, B3, C, D, and D1 helicopters, both dated March 3, 2004, as applicable. Reinstall the modified fuel bleed lever and mark it with P/N 350A08254720.

(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, FAA, for information about previously approved alternative methods of compliance.

(c) The modification shall be done in accordance with Eurocopter Alert Service Bulletin Nos. 28A001 and 28.00.16, both dated March 3, 2004. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected 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.*

(d) This amendment becomes effective on March 21, 2005.

Note: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (France) AD Nos. F–2004–033 and F–2004–034, both dated March 17, 2004.

Issued in Fort Worth, Texas, on January 25, 2005.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–2587 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20294; Directorate Identifier 2004–SW–39–AD; Amendment 39–13965; AD 2005–03–09]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B, EC155B1, SA–360C, SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters. This action requires an initial and repetitive borescope inspection of the main gearbox (MGB) planet gear carrier or an initial and repetitive visual inspection of the MGB planet gear carrier for a crack. Replacing any MGB that has a cracked planet gear carrier is required before further flight. This amendment is prompted by the discovery of cracks in the web of the planet gear carrier. The actions specified in this AD are intended to detect a crack in the web of the planet gear carrier, which could lead to a MGB seizure and subsequent loss of control of the helicopter.

DATES: Effective March 1, 2005.

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

Comments for inclusion in the Rules Docket must be received on or before April 15, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this 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 AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. You may examine this information 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.*

Examining the Docket

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

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: This amendment adopts a new AD for Eurocopter Model EC 155B, EC155B1, SA–360C, SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1. This action requires an initial and repetitive borescope inspection of the MGB planet gear carrier or an initial and repetitive visual inspection of the MGB planet gear carrier for a crack. Replacing any MGB that has a cracked planet gear carrier is required before further flight. This amendment is prompted by the discovery of cracks in the web of the

planet gear carrier. This condition, if not detected and corrected, could lead to a MGB seizure and subsequent loss of control of the helicopter.

This AD is an interim action; the manufacturer and the FAA are continuing to collect information concerning the formation of these cracks. We will consider further rulemaking once we determine the cause of these cracks.

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 EC 155B, EC155B1, SA 365 N and N1, AS 365 N2 and N3, SA 366 G1, SA 365 C, C1, C2, and C3, SA 360 helicopters. The DGAC advises of cases of cracks that were discovered in the web of the planet gear carrier of the MGB. The DGAC advises that rupture of the web of the planet gear carrier can lead to seizure of the MGB.

Eurocopter has issued Alert Telex Nos. 05.00.48, 05.33, 05.26, and 05A007, dated December 16, 2004. The alert telex specifies performing periodic borescope inspections of the MGB planet gear carrier at regular intervals to make sure that there is no crack in the web. The manufacturer states that a periodic borescope inspection is mandatory, so that a crack, if any, can be detected before it generates any chips which can be found on the magnetic plug. The DGAC classified this alert telex as mandatory and issued AD UF–2004–194, effective December 17, 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. The FAA has 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 unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, this AD is being issued to detect a crack in the web of the planet gear carrier, which could lead to a MGB seizure and subsequent loss of control of the helicopter. This AD requires the following:

- For a MGB that has less than 250 hours time-in-service (TIS) since new or last overhaul, borescope inspecting or visually inspecting the web of the planet gear carrier for a crack. The inspections must be done on or before the MGB reaches 265 hours TIS and then at intervals not to exceed 50 hours TIS.
- For a MGB that has 250 or more hours TIS since new or since last overhaul, borescope inspecting or visually inspecting the web of the planet gear carrier for a crack. The inspections must be done within 15 hours TIS and then at intervals not to exceed 50 hours TIS.
- For any MGB that has a cracked planet gear carrier, replacing the MGB with an airworthy MGB before further flight.

The inspections shall be done using the Alert Telex described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Fifty hours TIS equates to approximately 30 days of operations for these model helicopters. Therefore, because of the short compliance time, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 145 helicopters. Each borescope inspection will take approximately 1 work hour and each visual inspection will take approximately 12 hours. Replacing the MGB, if necessary, will take approximately 16 work hours. The average labor rate is $65 per work hour. Required parts will cost approximately $68,780 per main gearbox. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,534,280, assuming that a borescope inspection is done on the entire fleet 12 times a year, that no visual inspection is done, and that 49 MGBs are replaced.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send or deliver your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20294; Directorate Identifier 2004–SW–39–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the 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 AD. 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 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.*

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 the 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 an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

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, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–03–09 Eurocopter France: Amendment 39–13965. Docket No. FAA–2005–20294; Directorate Identifier 2004–SW–39–AD.

Applicability: Model EC 155B, EC155B1, SA–360C, SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters, certificated in any category.

Compliance: Required as indicated in the following table, unless accomplished previously.

For a main gearbox (MGB) that has:	Inspect:
(1) Less than 250 hours time-in-service (TIS) since new or last overhaul.	On or before the MGB reaches 265 hours TIS and then at intervals not to exceed 50 hours TIS.
(2) 250 or more hours TIS since new or last overhaul	Within 15 hours TIS and then at intervals not to exceed 50 hours TIS.

To detect a crack in the web of the planet gear carrier, which could lead to a main gearbox (MGB) seizure and subsequent loss of control of the helicopter, accomplish the following:

(a) Either borescope inspect the web of the MGB planet gear carrier for a crack in accordance with the Operational Procedure, paragraph 2.B.1., of Eurocopter Alert Telex No. 05.00.48, 05.33, 05.26, and 05A007, dated December 16, 2004 (Alert Telex) or visually inspect the MGB planet gear carrier in accordance with the Operational Procedure, paragraph 2.B.3., of the Alert Telex.

(b) If a crack is found in the planet gear carrier, replace the MGB with an airworthy MGB before further flight.

(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, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(d) The inspections shall be done in accordance with Eurocopter Alert Telex No. 05.00.48, 05.33, 05.26, and 05A007, dated December 16, 2004. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected 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.*

(e) This amendment becomes effective on March 1, 2005.

Note: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (France) AD No. UF–2004–194, effective December 17, 2004.

Issued in Fort Worth, Texas, on February 1, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–2585 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–16–AD; Amendment 39–13970; AD 2005–03–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

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

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that applies to all Airbus Model A300 B2 and B4 series airplanes. The existing AD currently requires determining the part and amendment number of the variable lever arm (VLA) of the rudder control system to verify the parts were installed using the correct standard, and corrective actions if necessary. For certain VLAs, this new AD requires repetitive inspections of the VLA and corrective action if necessary. This new AD also provides a terminating action for the repetitive inspections. Furthermore, this new AD reduces the applicability of affected airplanes. The actions specified by this AD are intended to prevent failure of both spring boxes of certain VLAs due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 21, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 2005.

The incorporation by reference of a certain other publication as listed in the regulations was approved previously by the Director of the Federal Register as of November 13, 2001 (66 FR 54416, October 29, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2001–22–02, amendment 39–12481 (66 FR 54416, October 29, 2001). The existing AD applies to all Airbus Model A300 B2 and B4 series airplanes. The proposed AD was published as a supplemental notice of proposed

rulemaking (NPRM) in the **Federal Register** on October 5, 2004 (69 FR 59557). The supplemental NPRM proposed to continue to require determining the part and amendment number of the variable lever arm (VLA) of the rudder control system to verify the parts were installed using the correct standard, and corrective actions if necessary. The supplemental NPRM also proposed to require repetitive inspections for damage, and replacement with a new VLA if necessary. The supplemental NPRM also proposed to reduce the applicability of affected airplanes and to mandate a terminating modification of the VLA, which would end the repetitive inspections.

Comments

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

Request To Clarify Affected Part Numbers

The commenter requests that paragraph (b) of the proposed AD be revised to specify that the referenced part numbers are for VLA spring boxes. The commenter states that the supplemental NPRM gives the impression of addressing a VLA assembly with P/Ns other than 418473–20 or 418473–200. The commenter notes that the referenced P/Ns are actually for the VLA spring boxes, not the VLA assembly. The P/Ns of the VLA assemblies are ''40720 with amendments other than 6,'' as described in Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002 (which was referenced in the supplemental NPRM as the appropriate source of service information for accomplishment of the inspections and corrective actions). The commenter contends that unless the P/Ns are clearly identified, operators may be confused regarding the applicability of paragraph (b) of the supplemental NPRM.

We agree with the commenter's request to clarify the affected part numbers. Paragraph (b) of this AD has been revised accordingly.

Conclusion

After careful review of the available data, including the comment noted above, we have determined that air safety and the public interest require the adoption of the rule with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

About 33 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2001–22–02, and retained in this AD, take about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $65 per airplane.

The new inspection required by this AD will take about 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new inspections on U.S. operators is estimated to be $2,145, or $65 per airplane, per inspection cycle.

The new modification required by this AD will take about 4 hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost will be minimal. Based on these figures, the cost impact of the new modification on U.S. operators is $8,580, or $260 per airplane.

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

Authority for This Rulemaking

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

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12481 (66 FR 54416, October 29, 2001), and by adding a new airworthiness directive (AD), amendment 39–13970, to read as follows:

2005–03–14 Airbus: Docket 2003–NM–16–AD. Amendment 39–13970. Supersedes AD 2002–08–13, Amendment 39–12481.

Applicability: Model A300 B2 and B4 series airplanes, certificated in any category; except those airplanes modified by Airbus Modification 12656.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both spring boxes of certain VLAs due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane, accomplish the following:

Restatement of the Requirements of AD 2001–22–02

(a) Within 10 days after November 13, 2001 (the effective date of AD 2001–22–02, amendment 39–12481): Determine the part and amendment numbers of the VLA of the rudder control system to verify the parts were installed using the correct standard, in accordance with Airbus All Operators Telex (AOT) A300–27A0196, dated September 20, 2001; or in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002.

(1) If the part and amendment numbers shown are not correct, as specified in the AOT or the service bulletin, before further flight, do a detailed inspection of the VLA tie rod for damage (bent or ruptured rod) in accordance with the AOT or the service bulletin.

(i) If the tie rod is damaged, replace the VLA with a new VLA in accordance with the AOT or the service bulletin. Such replacement ends the requirements of this paragraph.

(ii) If the tie rod is not damaged, no further action is required by this paragraph.

(2) If the part and amendment numbers shown are correct, no further action is required by this paragraph.

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

New Requirements of This AD

(b) For airplanes having VLA spring boxes with any part number (P/N) other than 418473–20 or 418473–200: Within 500 flight hours after the effective date of this AD, do a detailed inspection of the tie rod for damage (bent or ruptured rod), by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002. Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours, until paragraph (f) of this AD has been accomplished.

Replacement or Repair

(c) If any damage is found to the VLA or the rudder control system during any inspection required by paragraph (a)(1) or (b) of this AD, before further flight, replace the VLA with a new VLA (including a follow-up test) by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002.

No Reporting/Parts Return Requirements

(d) Although Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002, describes procedures for submitting certain information to the manufacturer, and for returning certain parts to the manufacturer, this AD does not require those actions.

Terminating Modification

(e) Within 24 months after the effective date of this AD: Modify the applicable VLA, as required by either paragraph (e)(1) or (e)(2) of this AD, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–27–0198, dated December 1, 2003. Accomplishing this modification ends the repetitive inspections required by paragraph (b) of this AD.

(1) For any VLA having a spring box with P/N 418473–20 or 418473–200: Install a new identification plate and re-identify the VLA.

(2) For any VLA having a spring box with P/N 418473 or 418473–100: Modify the spring box and re-identify the VLA.

Note 2: Airbus Service Bulletin A300–27–0198, dated December 1, 2003, references Goodrich Actuation Systems Service Bulletin 27–21–1H, Revision 3, dated December 8, 2003, as an additional source of service information for accomplishing the modification.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions must be done in accordance with the service information in Table 1 of this AD. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Airbus service information	Revision level	Date
All Operators Telex A300–27A0196	Original	Sept. 20, 2001.
Service Bulletin A300–27–0196, excluding Appendix 01	01	Nov. 13, 2002.
Service Bulletin A300–27–0198	Original	Dec. 1, 2003.

(1) The incorporation by reference of Airbus Service Bulletin A300–27–0196, excluding Appendix 01, Revision 01, dated November 13, 2002; and Airbus Service Bulletin A300–27–0198, dated December 1, 2003; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus All Operators Telex A300–27A0196, dated September 20, 2001, was approved previously by the Director of the Federal Register as of November 13, 2001 (66 FR 54416, October 29, 2001).

Note 3: The subject of this AD is addressed in French airworthiness directive F–2004–091(B), dated June 23, 2004.

Effective Date

(h) This amendment becomes effective on March 21, 2005.

Issued in Renton, Washington, on January 31, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2581 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–256–AD; Amendment 39–13968; AD 2005–03–12]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes. This AD requires initial and repetitive inspections of certain frame stiffeners to detect cracking. If any cracking is found, this AD requires replacement of the stiffener with a new, reinforced stiffener. Replacement of the stiffener constitutes terminating action for certain inspections. This AD also requires a one-time inspection of any new, reinforced stiffener; and repair or replacement of the new, reinforced stiffener if any cracking is found during the one-time inspection. This AD also provides for an optional terminating action for certain requirements of this AD. The actions specified by this AD are intended to prevent fatigue failure of certain frame stiffener fittings, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 21, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on November 22, 2004 (69 FR 67869). That supplemental NPRM proposed to require initial and repetitive inspections of certain frame stiffeners to detect cracking. If any cracking is found, that supplemental NPRM proposed to require replacement of the stiffener with a new, reinforced stiffener. Replacement of the stiffener would constitute terminating action for certain inspections. That supplemental NPRM also proposed to require a one-time inspection of any new, reinforced stiffener; and repair or replacement of the new, reinforced stiffener if any cracking is found during the one-time inspection. That supplemental NPRM also provided for an optional terminating action for certain requirements of that supplemental NPRM. In addition, that supplemental NPRM also proposed to reduce the compliance time for the initial inspections of the affected frame stiffeners.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the supplemental NPRM 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 in the supplemental NPRM.

Cost Impact

We estimate that 20 Model A330 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,200, or $260 per airplane, per inspection cycle.

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

If an operator chooses to do the optional terminating action rather than continue the repetitive inspections, it will take about 74 work hours per airplane to accomplish the installations, at an average labor rate of $65 per work hour. Required parts will cost about $7,860 per airplane. Based on these figures, we estimate the cost of this optional terminating action to be $12,670 per airplane.

Currently, there are no affected Model A340–200 or A340–300 series airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, it will take approximately 4 work hours to accomplish the required inspection, at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of this AD to be $260 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is

contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2005–NM–03–12 Airbus: Amendment 39–13968. Docket 2003–NM–256–AD.

Applicability: Model A330 series airplanes; and Model A340–200 and A340–300 series airplanes; certificated in any category; except those on which Airbus Modification 49694 has been installed.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of certain frame stiffener fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

Initial and Repetitive Inspections

(a) Prior to the accumulation of 13,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later: Conduct a high-frequency eddy current (HFEC) inspection for cracking of the FR12A stiffener fitting in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003 (for Model A330 series airplanes); or Airbus Service Bulletin A340–53–4141, Revision 02, dated August 13, 2004 (for Model A340–200 and A340–300 series airplanes); as applicable. Repeat the inspection at intervals not to exceed 10,000 flight cycles until the replacement required by paragraph (b) of this AD is accomplished; or until the optional terminating action in paragraph (d) of this AD is accomplished. The actions in paragraphs (b) and (d) of this AD constitute terminating action for the repetitive inspections only for the side on which the actions are taken.

Replacement

(b) If any cracking is detected during any inspection required by paragraph (a) of this AD: Before further flight, replace the affected FR12A stiffener with a new reinforced FR12A stiffener in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003; or Airbus Service Bulletin A340–53–4141, Revision 02, dated August 13, 2004; as applicable. Replacement of the stiffener constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD, only for the side on which the replacement is made.

Follow-On Inspection

(c) For airplanes on which a new, reinforced stiffener is installed in accordance with paragraph (b) of this AD: Within 14,600 flight cycles following the installation, perform an HFEC inspection of the FR12A stiffener fitting for cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003; or Airbus Service Bulletin A340–53–4141, Revision 02, dated August 13, 2004; as applicable. If any cracking is detected, before further flight, repair or replace the new reinforced stiffener with a new stiffener in a manner approved by either the Manager, International Branch, ANM–116, FAA; or the Direction Générale de l'Aviation Civile (or its delegated agent).

Optional Terminating Action

(d) Replacement of the FR12A stiffeners with new, reinforced stiffeners; installation of new reinforced junction fittings between FR12A/FR13 and FR13/FR13A at the stringer 26 level; and installation of a new shear web that joins the fitting to the cabin floor track; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3130, Revision 01, dated October 10, 2003; or Airbus Service Bulletin A340–53–4137, Revision 01, dated October 10, 2003; as applicable; constitutes terminating action for the inspection requirements of paragraphs (a) and (c) of this AD, only for the side on which the replacement and installations are made.

Actions Accomplished per Previous Issues of Service Bulletins

(e) Actions accomplished before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletins A330–53–3130, dated May 26, 2003; A330–53–3135, dated May 26, 2003; A340–53–4137, dated May 26, 2003; A340–53–4141, dated May 26, 2003; or A340–53–4141, Revision 01, dated July 7, 2003; are considered acceptable for compliance only with the following requirements of this AD: The HFEC inspections required by paragraph (a) of this AD, the replacement required by paragraph (b) of this AD, and the actions in paragraph (d) of this AD.

No Reporting Requirements

(f) Although the Accomplishment Instructions of Airbus Service Bulletin A330–53–3135, Revision 01, dated July 7, 2003; and Airbus Service Bulletin A340–53–4141, Revision 02, dated August 13, 2004; describe procedures for submitting certain information to the manufacturer, this AD does not require those actions.

Alternative Methods of Compliance

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

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions must be done in accordance with the service information listed in Table 1 of this AD, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A330–53–3130	01	October 10, 2003.
A330–53–3135	01	July 7, 2003.
A340–53–4137	01	October 10, 2003.
A340–53–4141	02	August 13, 2004.

Note 1: The subject of this AD is addressed in French airworthiness directives 2003–205(B), dated May 28, 2003; and 2003–206(B), dated May 28, 2003.

Effective Date

(i) This amendment becomes effective on March 21, 2005.

Issued in Renton, Washington, on January 31, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2579 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19561; Directorate Identifier 2004–NM–50–AD; Amendment 39–13972; AD 2005–03–16]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH.125, HS.125, and BH.125 Series Airplanes; BAe.125 Series 800A (C–29A and U–125) and 800B Airplanes; and Hawker 800 (Including Variant U–125A) and 800XP Airplanes; Equipped with TFE731 Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon Model DH.125, HS.125, and BH.125 series airplanes; BAe.125 series 800A (C–29A and U–125) and 800B airplanes; and Hawker 800 (including variant U–125A) and 800XP airplanes. This AD requires installing insulating blankets on the engine compartment firewall and the wire harness passing through the firewall fairlead. This AD is prompted by a report indicating that insulation on the wire harness passing through the firewall fairlead ignited on the fuselage side of the firewall. We are issuing this AD to prevent a fire in the engine compartment from causing possible ignition of outgassing wire insulation on the fuselage side of the firewall, which could lead to an uncontrollable fire in the fuselage.

DATES: This AD becomes effective March 21, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of March 21, 2005.

ADDRESSES: For service information identified in this AD, contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. You can examine this information 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.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–19561; the directorate identifier for this docket is 2004–NM–50–AD.

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

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for certain Raytheon Model DH.125, HS.125, and BH.125 series airplanes; BAe.125 series 800A (C–29A and U–125) and 800B airplanes; and Hawker 800 (including variant U–125A) and 800XP airplanes. That action, published in the **Federal Register** on November 10, 2004 (69 FR 65103), proposed to require installing insulating blankets on the engine compartment firewall and the wire harness passing through the firewall fairlead.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Explanation of Change Made to the Proposal

We inadvertently left the paragraph number off the paragraph headed ''No Reporting Requirement'' between paragraphs (f) and (g) of the proposed AD. We have identified the specified paragraph as (g) and reidentified the original paragraph (g) to (h) in the final rule.

Conclusion

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

Costs of Compliance

There are about 804 airplanes of the affected design in the worldwide fleet. This AD will affect about 530 airplanes of U.S. registry. The actions will take about 8 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $1,784 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $1,221,120, or $2,304 per airplane.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–03–16 Raytheon Aircraft Company: Amendment 39–13972. Docket No. FAA–2004–19561; Directorate Identifier 2004–NM–50–AD.

Effective Date

(a) This AD becomes effective March 21, 2005.

Affected ADs

(b) None.

Applicability

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

Unsafe Condition

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

Compliance

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

Installation of Insulating Blankets

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

No Reporting Requirement

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

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(i) You must use Raytheon Service Bulletin SB 26–3496, dated November 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on January 31, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2577 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19765; Directorate Identifier 2002–NM–72–AD; Amendment 39–13971; AD 2005–03–15]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes and Model Avro 146–RJ Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. This AD requires repetitive inspections to detect discrepancies of the fuselage skin and reinforcing plates along the wing to fuselage fairing access panels on the left- and right-hand sides of the airplane, and repair if necessary. This AD also provides for an optional terminating action for the repetitive inspections. This AD is prompted by a report of chafing on the wing to fuselage fairing panels. We are issuing this AD to prevent chafing of the fuselage skin and reinforcing plates, which could lead to reduced structural integrity of the airplane's fuselage.

DATES: This AD becomes effective March 21, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of March 21, 2005.

ADDRESSES: For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. You can examine this information 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.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–19765; the directorate identifier for this docket is 2002–NM–72–AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for certain BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ

series airplanes. That action, published in the **Federal Register** on December 7, 2004 (69 FR 70564), proposed to require repetitive inspections to detect discrepancies of the fuselage skin and reinforcing plates along the wing to fuselage fairing access panels on the left- and right-hand sides of the airplane, and repair if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD 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

This AD will affect about 65 airplanes of U.S. registry. The inspection will take about 4 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $16,900, or $260 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–03–15 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13971. Docket No. FAA–2004–19765; Directorate Identifier 2002–NM–72–AD.

Effective Date

(a) This AD becomes effective March 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes; certificated in any category; on which modification HCM01037A has been incorporated.

Unsafe Condition

(d) This AD was prompted by a report of chafing on the wing to fuselage fairing panels. We are issuing this AD to prevent chafing of the fuselage skin and reinforcing plates, which could lead to reduced structural integrity of the airplane's fuselage.

Compliance

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

Service Bulletin

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–162, dated September 12, 2001.

Repetitive Detailed Inspections

(g) Prior to the accumulation of 8,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, do a detailed inspection to detect discrepancies (*i.e.*, chafing outside the limits specified in the service bulletin, scoring, or cracking) of the fuselage skin and reinforcing plates along the wing to fuselage fairing access panels on the left- and right-hand sides of the airplane, in accordance with the service bulletin. Repeat the detailed inspection thereafter at intervals not to exceed 4,000 flight cycles, until the terminating action specified in paragraph (i) of this AD has been 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.''

Corrective Action

(h) If any discrepancy is found during the detailed inspection required by paragraph (g) of this AD, before further flight, repair according to a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (CAA) (or its delegated agent).

Optional Terminating Action and Follow-On Inspections

(i) Modify the fuselage skin at the wing-to-fuselage access panels, do the related repetitive investigative action, and do applicable corrective actions by accomplishing all the actions in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.53–162–01698A, Revision 1, dated January 31, 2002. These actions terminate the repetitive inspections required by paragraph (g) of this AD. Repeat the related repetitive investigative action (which involves inspecting the protective tape and sealant for damage) thereafter at intervals not to exceed 4,000 flight cycles.

No Reporting

(j) Although the service bulletin referenced in this AD specifies to submit an inspection report, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, has the authority to approve

AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(l) British airworthiness directive 002–09–2001 also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–162, dated September 12, 2001, to perform the actions that are required by this AD, unless the AD specifies otherwise. You must use BAE Systems (Operations) Limited Modification Service Bulletin SB.53–162–01698A, Revision 1, dated January 31, 2002, to perform the optional terminating actions specified in this AD. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on January 31, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2576 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19478; Airspace Docket No. 04–AWP–10]

Revocation of Class D Airspace; South Lake Tahoe, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace area for the South Lake Tahoe Airport, South Lake Tahoe, California. The FAA is taking this action due to closure of the Airport Traffic Control Tower (ATCT).

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Branch, Western Terminal Operations, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California; telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

Airport Traffic Control Tower services are no longer available at South Lake Tahoe Airport. Therefore, under Federal regulation, the airport no longer qualifies for Class D airspace. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be removed subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revokes Class D airspace at South Lake Tahoe, CA. 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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

■ In consideration of the foregoing, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

AWP CA D South Lake Tahoe, CA [Remove]

South Lake Tahoe Airport, CA
(Lat. 38°53′38″ N, long. 119°59′44″ W)

That airspace extending upward from the surface to and indicating 8,800 feet MSL within a 4.3-mile radius of Lake Tahoe Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective data and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on January 6, 2005.

John Clancy,

Area Director, Western Terminal Operations.

[FR Doc. 05–2801 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 119

Office of the Secretary

14 CFR Part 234

[Docket No. OST–2005–20331]

RIN 2105–AD48

Reports by Carriers on Incidents Involving Animals During Air Transport

AGENCIES: Federal Aviation Administration, Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department of Transportation (Department or DOT) is making a technical change to the August 11, 2003, final rule implementing section 710 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) to require the reporting airlines to submit the required information on the loss, injury, or death of an animal during air transport to DOT's Aviation Consumer Protection Division rather than the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) and, accordingly, is

making the rule part of DOT's economic regulations.

DATES: This rule becomes effective March 16, 2005.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Supervisory Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Office of the General Counsel, 400 7th Street, SW., Room 10424, Washington, DC 20590, 202–366–9342 (voice), 202–366–7153 (fax), or *blane.workie@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On August 11, 2003, the Department, through its Federal Aviation Administration (FAA), issued a final rule implementing section 710 of AIR–21 requiring air carriers that provide scheduled passenger air transportation to submit a monthly report to USDA's APHIS on any incident involving the loss, injury or death of an animal during air transportation provided by the air carrier (68 FR 47798). Under the rule, the reports would then be shared with DOT, which would publish the data, as required by AIR–21, in a format similar to the manner in which it publishes consumer complaints and incident reports. However, issues arose regarding whether APHIS had the capability to accept such information directly from the carriers and pass it on to DOT. In order to resolve any such issues, the Department has decided to make a technical change in the rule so that airlines will submit the required information directly to DOT's Aviation Consumer Protection Division (ACPD), rather than APHIS. The ACPD will then publish the required data on animal transport and share the data with APHIS. This OST final rule amends the August 11, 2003, final rule accordingly. Finally, as a technical matter, the rule is being relocated from 14 CFR Chapter I to 14 CFR Chapter II where other requirements overseen by ACPD are located.

It is important to note that this rule does not change the type and manner of information that air carriers must submit but simply designates DOT's ACPD as the office that would receive the monthly reports directly from air carriers on the loss, injury or death of an animal during air transport. The information required to be submitted to the ACPD should be sent preferably in Word format via e-mail to *animalreports@ost.dot.gov* or to the following address: Aviation Consumer Protection Division, Room 4107, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Regulatory Analysis and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking is not ''significant'' under Executive Order 12866 or the Department of Transportation Regulatory Policies and Procedures and was not reviewed by the Office of Management and Budget. Because this rule merely changes where information should be filed, there are no costs associated with this rule.

B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This rule will have no costs because it merely changes where the reports will be filed. We hereby certify this final rule will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to: Department of Transportation, Aviation Enforcement and Proceedings, Office of the General Counsel, 400 7th Street, SW., Room 4116, Washington, DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. OST may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. OST intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The ICRs were previously published in the **Federal Register** (68 FR 47627). Neither the assumptions upon which these calculations are based nor the information collection burden hours have changed. The title, description, respondent description of the information collections and the annual recordkeeping and periodic reporting burden are stated below.

Title: Reports by Carriers on Incidents Involving Animals During Air Transport.

Type of Request: New Collection.

Description: Congress mandated this rule as part of Public Law 106–810, to require air carriers to track and report incidents of loss, injury, or death of a pet during transport. The information gathered and reported by the air carriers will provide the public with valuable information when choosing an air carrier to use when traveling with a pet.

Respondents: Air Carriers that transport pets—30 Transport Air Carriers.

Frequency: 12 reports to DOT per year for each respondent.

Estimated Annual Burden Hours: An estimated 360 hours annually.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

G. Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that create unnecessary obstacles to the foreign commerce of the United States. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, it is the policy of the Administration 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 U.S. In accordance with the above statute and policy, OST has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

H. Energy Impact

The energy impact of the final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163 as amended (42 U.S.C. 6362). We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 234

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 14 CFR chapters I and II are amended as follows:

Chapter I—Federal Aviation Administration, Department of Transportation

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 1. The authority citation for Part 119 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

§ 119.72 [Removed]

■ 2. Section 119.72 is removed.

Chapter II—Office of the Secretary, Department of Transportation

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

■ 3. The authority citation for Part 234 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 401 and 417.

■ 4. Section 234.13 is added to read as follows:

§ 234.13 Reports by air carriers on incidents involving animals during air transport.

(a) Any air carrier that provides scheduled passenger air transportation shall, within 15 days of the end of the month to which the information applies, submit to the United States Department of Transportation's Aviation Consumer Protection Division a report on any incidents involving the loss, injury, or death of an animal during air transport provided by the air carrier.

(b) The report shall be made in the form and manner set forth in reporting directives issued by the Deputy General Counsel for the U.S. Department of Transportation and shall contain the following information:

(1) Carrier and flight number;

(2) Date and time of the incident;

(3) Description of the animal, including name, if applicable;

(4) Identification of the owner(s) and/or guardian of the animal;

(5) Narrative description of the incident;

(6) Narrative description of the cause of the incident;

(7) Narrative description of any corrective action taken in response to the incident; and

(8) Name, title, address, and telephone number of the individual filing the report on behalf of the air carrier.

(c) For purposes of this section:

(1) The air transport of an animal includes the entire period during which an animal is in the custody of an air carrier, from check-in of the animal prior to departure until the animal is returned to the owner or guardian of the animal at the final destination of the animal; and

(2) Animal means any warm or cold blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States.

Issued in Washington, DC, on February 4, 2005.

Norman Y. Mineta,

Secretary.

[FR Doc. 05–2755 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 2003F–0535]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to permit the manufacture of chlorine dioxide by electrolysis of an aqueous solution of sodium chlorite. This action is in response to a petition filed by Vulcan Chemicals.

DATES: This rule is effective February 14, 2005. Submit written or electronic objections and requests for a hearing by March 16, 2005. See section VI of this document for information on the filing of objections. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 173.300 (21 CFR 173.300) as of February 14, 2005.

ADDRESSES: You may submit written objections and requests for a hearing, identified by Docket No. 2003F–0535, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2003F–0535 in the subject line of your e-mail message.

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All objections received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paul C. DeLeo, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1302.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of December 1, 2003 (68 FR 67195), FDA announced that a food additive petition (FAP 4A4751) had been filed by Vulcan Chemicals, P.O. Box 385015, Birmingham, AL 35238–5015. The petition proposed to amend the food additive regulations in § 173.300 *Chlorine dioxide* (21 CFR 173.300) to provide for an additional method for producing the additive, specifically, treating an aqueous solution of sodium chlorite by electrolysis.

In the notice of filing, the agency announced that it was placing the environmental assessment on display at the Division of Dockets Management for public review and comment. FDA did not receive any comments addressing the potential environmental effects of the proposed change to the regulation. As discussed below, the agency has determined that this action will not have a significant impact on the human environment and that an environmental impact statement is not required.

II. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that chlorine dioxide generated by electrolysis of an aqueous solution of sodium chlorite is equivalent to the chlorine dioxide generated by the currently-approved methods as described in § 173.300 (Ref. 1). In addition, the chlorine dioxide generated by the electrolytic process will have the same intended technical effect and use as the chlorine dioxide produced by the currently-approved methods. Consequently, there will be no change in the exposure to chlorine dioxide from the petitioned use. Therefore, FDA concludes that § 173.300 should be amended as set forth below.

Based on a request by the petitioner, the FDA is also updating § 173.300 by citing the 20th edition of the method that is incorporated by reference rather than the 18th edition. Section 173.300 currently incorporates by reference Method 4500–ClO_2 E in the ''Standard Methods for the Examination of Water and Wastewater,'' 18th ed., 1992. The agency compared the 18th and 20th editions of this method and found them to be identical. Therefore, the agency is making this requested editorial change.

III. Public Disclosure

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed in this document. As provided in § 171.1(h) the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

V. Paperwork Reduction Act of 1995

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

VI. Objection and Hearing Requests

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written objections by (see **DATES**). Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VII. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from H. Lee, FDA Division of Petition Review, Chemistry Review Group, to P. DeLeo, FDA, Division of Petition Review, Regulatory Group I, March 17, 2004.

List of Subjects in 21 CFR Part 173

Food additives, Incorporation by reference.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. Section 173.300 is amended by revising paragraphs (a) and (b) to read as follows:

§ 173.300 Chlorine dioxide.

* * * * *

(a)(1) The additive is generated by one of the following methods:

(i) Treating an aqueous solution of sodium chlorite with either chlorine gas or a mixture of sodium hypochlorite and hydrochloric acid.

(ii) Treating an aqueous solution of sodium chlorate with hydrogen peroxide in the presence of sulfuric acid.

(iii) Treating an aqueous solution of sodium chlorite by electrolysis.

(2) The generator effluent contains at least 90 percent (by weight) of chlorine dioxide with respect to all chlorine species as determined by Method 4500–ClO_2 E in the ''Standard Methods for the Examination of Water and Wastewater,'' 20th ed., 1998, or an equivalent method. Method 4500–ClO_2 E (''Amperometric Method II'') is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or the American Public Health Association, 800 I St. NW., Washington, DC 20001–3750. You may inspect a copy at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, 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.*

(b)(1) The additive may be used as an antimicrobial agent in water used in poultry processing in an amount not to exceed 3 parts per million (ppm) residual chlorine dioxide as determined by Method 4500–ClO_2 E, referenced in paragraph (a)(2) of this section, or an equivalent method.

(2) The additive may be used as an antimicrobial agent in water used to wash fruits and vegetables that are not raw agricultural commodities in an amount not to exceed 3 ppm residual chlorine dioxide as determined by Method 4500–ClO_2 E, referenced in paragraph (a)(2) of this section, or an equivalent method. Treatment of the fruits and vegetables with chlorine dioxide shall be followed by a potable water rinse or by blanching, cooking, or canning.

Dated: January 28, 2005.

Leslye M. Fraser,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 05–2808 Filed 2–11–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 9178]

RIN 1545–BB15

Testimony or Production of Records in a Court or Other Proceeding

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations replacing the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of IRS records or information. The purpose of the final regulations is to provide specific instructions and to clarify the circumstances under which more specific procedures take precedence. The final regulations extend the application of the regulation to former IRS officers and employees as well as to persons who are or were under contract to the IRS. The final regulations affect current and former IRS officers, employees and contractors, and persons who make requests or demands for disclosure.

DATES: *Effective Date:* These regulations are effective February 14, 2005.

Applicability Date: For dates of applicability, see § 301.9000–7.

FOR FURTHER INFORMATION CONTACT: Scott E. Powers, (202) 622–4580 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1850.

The collections of information are in § 301.9000–5. This information is required to enable the IRS to provide authorizing officials with a better informed basis upon which to determine whether to grant, deny, or limit testimony or the disclosure of IRS records or information so as to conserve agency resources.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The burden reflected in the notice of proposed rulemaking (REG–140930–02) relating to the procedures for IRS officers and employees to follow upon receipt of a request or demand for disclosure of IRS records or information was published in the **Federal Register** (68 FR 40850). Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Internal Revenue Code.

Background

This document contains amendments to 26 CFR part 301 under 5 U.S.C. 301 and 26 CFR part 602. On July 9, 2003, a notice of proposed rulemaking (REG–140930–02) relating to the procedures for IRS officers and employees to follow upon receipt of a request or demand for disclosure of IRS records or information was published in the **Federal Register** (68 FR 40850). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted as amended by this Treasury decision. With the exception of changes that are grammatical in nature, the revisions are discussed below.

Summary of Comments and Explanation of Revisions

The regulations have been clarified by the addition of an example illustrating a situation in which testimony authorization is required. In addition, text and examples have been added to illustrate that even though testimony authorization may not be required, any disclosure of IRS records and information must be proper under the applicable substantive law. For

example, any disclosure of returns and return information must comply with section 6103, and any disclosure of tax convention information must comply with section 6105 and be coordinated with the United States Competent Authority.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that 5 U.S.C. 553(b), the Administrative Procedure Act, does not apply to these final regulations.

It is hereby certified that the collection of information in these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that of the estimated 1,400 requests received annually, less than 500 of those requests are estimated to be received from small entities. Moreover, the burden associated with complying with the collection of information in these regulations is estimated to be only 1 hour per respondent. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of this final regulation are David Fish and Scott E. Powers, Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for Part 301 is amended by adding the following entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 301.9000–1 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;
Section 301.9000–2 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;
Section 301.9000–3 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;
Section 301.9000–4 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;
Section 301.9000–5 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;
Section 301.9000–6 also issued under 5 U.S.C. 301 and 26 U.S.C. 6103(q) and 7804;
* * *

■ **Par. 2.** Section 301.9000–1 is revised and §§ 301.9000–2 through 301.9000–7 are added to read as follows:

§ 301.9000–1 Definitions when used in §§ 301.9000–1 through 301.9000–6.

(a) *IRS records or information* means any material (including copies thereof) contained in the files (including paper, electronic or other media files) of the Internal Revenue Service (IRS), any information relating to material contained in the files of the IRS, or any information acquired by an IRS officer or employee, while an IRS officer or employee, as a part of the performance of official duties or because of that IRS officer's or employee's official status with respect to the administration of the internal revenue laws or any other laws administered by or concerning the IRS. IRS records or information includes, but is not limited to, returns and return information as those terms are defined in section 6103(b)(1) and (2) of the Internal Revenue Code (Code), tax convention information as defined in section 6105 of the Code, information gathered during Bank Secrecy Act and money laundering investigations, and personnel records and other information pertaining to IRS officers and employees. IRS records and information also includes information received, generated or collected by an IRS contractor pursuant to the contractor's contract or agreement with the IRS. The term does not include records or information obtained by IRS officers and employees, solely for the purpose of a federal grand jury investigation, while under the direction and control of the United States Attorney's Office. The term IRS records or information nevertheless does include records or information obtained by the IRS before, during, or after a Federal grand jury investigation if the records or information are obtained—

(1) At the administrative stage of a criminal investigation (prior to the initiation of the grand jury);

(2) From IRS files (such as transcripts or tax returns); or

(3) For use in a subsequent civil investigation.

(b) *IRS officers and employees* means all officers and employees of the United States appointed by, employed by, or subject to the directions, instructions, or orders of the Commissioner or IRS Chief Counsel and also includes former officers and employees.

(c) *IRS contractor* means any person, including the person's current and former employees, maintaining IRS records or information pursuant to a contract or agreement with the IRS, and also includes former contractors.

(d) A *request* is any request for testimony of an IRS officer, employee or contractor or for production of IRS records or information, oral or written, by any person, which is not a demand.

(e) A *demand* is any subpoena or other order of any court, administrative agency or other authority, or the Congress, or a committee or subcommittee of the Congress, and any notice of deposition (either upon oral examination or written questions), request for admissions, request for production of documents or things, written interrogatories to parties, or other notice of, request for, or service for discovery in a matter before any court, administrative agency or other authority.

(f) An *IRS matter* is any matter before any court, administrative agency or other authority in which the United States, the Commissioner, the IRS, or any IRS officer or employee acting in an official capacity, or any IRS officer or employee (including an officer or employee of IRS Office of Chief Counsel) in his or her individual capacity if the United States Department of Justice or the IRS has agreed to represent or provide representation to the IRS officer or employee, is a party and that is directly related to official business of the IRS or to any law administered by or concerning the IRS, including, but not limited to, judicial and administrative proceedings described in section 6103(h)(4) and (l)(4) of the Internal Revenue Code.

(g) An *IRS congressional matter* is any matter before the Congress, or a committee or subcommittee of the Congress, that is related to the administration of the internal revenue laws or any other laws administered by or concerning the IRS, or to IRS records or information.

(h) A *non-IRS matter* is any matter that is not an IRS matter or an IRS congressional matter.

(i) A *testimony authorization* is a written instruction or oral instruction memorialized in writing within a reasonable period by an authorizing official that sets forth the scope of and limitations on proposed testimony and/or disclosure of IRS records or information issued in response to a request or demand for IRS records or information. A testimony authorization may grant or deny authorization to testify or disclose IRS records or information and may make an authorization effective only upon the occurrence of a precedent condition, such as the receipt of a consent complying with the provisions of section 6103(c) of the Internal Revenue Code. To authorize testimony means to issue the instruction described in this paragraph (i).

(j) An *authorizing official* is a person with delegated authority to authorize testimony and the disclosure of IRS records or information.

§ 301.9000–2 Considerations in responding to a request or demand for IRS records or information.

(a) *Situations in which disclosure shall not be authorized.* Authorizing officials shall not permit testimony or disclosure of IRS records or information in response to requests or demands if testimony or disclosure of IRS records or information would—

(1) Violate a Federal statute including, but not limited to, sections 6103 or 6105 of the Internal Revenue Code (Code), the Privacy Act of 1974 (5 U.S.C. 552a), or a rule of procedure, such as the grand jury secrecy rule, Fed. R. Crim. P. 6(e);

(2) Violate a specific Federal regulation, including, but not limited to, 31 CFR 103.53;

(3) Reveal classified national security information, unless properly declassified;

(4) Reveal the identity of an informant; or

(5) Reveal investigatory records or information compiled for law enforcement purposes that would permit interference with law enforcement proceedings or would disclose investigative techniques and procedures, the effectiveness of which could thereby be impaired.

(b) *Assertion of privileges.* Any applicable privilege or protection under law may be asserted in response to a request or demand for testimony or disclosure of IRS records or information, including, but not limited to, the following—

(1) Attorney-client privilege;

(2) Attorney work product doctrine; and

(3) Deliberative process (executive) privilege.

(c) *Non-IRS matters.* If any person makes a request or demand for IRS records or information in connection with a non-IRS matter, authorizing officials shall take into account the following additional factors in responding to the request or demand—

(1) Whether the requester is a Federal agency, or a state or local government or agency thereof;

(2) Whether the demand was issued by a Federal or state court, administrative agency or other authority;

(3) The potential effect of the case on the administration of the internal revenue laws or any other laws administered by or concerning the IRS;

(4) The importance of the legal issues presented;

(5) Whether the IRS records or information are available from other sources;

(6) The IRS's anticipated commitment of time and anticipated expenditure of funds necessary to comply with the request or demand;

(7) The number of similar requests and their cumulative effect on the expenditure of IRS resources;

(8) Whether the request or demand allows a reasonable time for compliance (generally, at least fifteen business days);

(9) Whether the testimony or disclosure is appropriate under the rules of procedure governing the case or matter in which the request or demand arises;

(10) Whether the request or demand involves expert witness testimony;

(11) Whether the request or demand is for the testimony of an IRS officer, employee or contractor who is without personal knowledge of relevant facts;

(12) Whether the request or demand is for the testimony of a presidential appointee or senior executive and whether the testimony of a lower-level official would suffice;

(13) Whether the procedures in § 301.9000–5 have been followed; and

(14) Any other relevant factors that may be brought to the attention of the authorizing official.

§ 301.9000–3 Testimony authorizations.

(a) *Prohibition on disclosure of IRS records or information without testimony authorization.* Except as provided in paragraph (b) of this section, when a request or demand for IRS records or information is made, no IRS officer, employee or contractor shall testify or disclose IRS records or information to any court, administrative agency or other authority, or to the Congress, or to a committee or subcommittee of the Congress without a testimony authorization. However, an IRS officer, employee or contractor may appear in person to advise that he or she is awaiting instructions from an authorizing official with respect to the request or demand.

(b) *Exceptions.* No testimony authorization is required in the following circumstances—

(1) To respond to a request or demand for IRS records or information by the attorney or other government representative representing the IRS in a particular IRS matter;

(2) To respond solely in writing, under the direction of the attorney or other government representative, to requests and demands in IRS matters, including, but not limited to, admissions, document production, and written interrogatories to parties;

(3) To respond to a request or demand issued to a former IRS officer, employee or contractor for expert or opinion testimony if the testimony sought from the former IRS officer, employee or contractor involves general knowledge (such as information contained in published procedures of the IRS or the IRS Office of Chief Counsel) gained while the former IRS officer, employee or contractor was employed or under contract with the IRS; or

(4) If a more specific procedure established by the Commissioner governs the disclosure of IRS records or information. These procedures include, but are not limited to, those relating to: procedures pursuant to § 601.702(d) of this chapter; Freedom of Information Act requests pursuant to 5 U.S.C. 552; Privacy Act of 1974 requests pursuant to 5 U.S.C. 552a; disclosures to state tax agencies pursuant to section 6103(d) of the Internal Revenue Code (Code); and disclosures to the United States Department of Justice pursuant to an ex parte order under section 6103(i)(1) of the Code.

(c) *Disclosures of IRS records or information with or without testimony authorization must be permitted under other applicable law.* Any disclosure of IRS records or information that is otherwise permissible under this section must not be prohibited under applicable law. For example, in a case in which returns and return information may be disclosed, the disclosure must be authorized under section 6103, even if any required testimony authorization is obtained. If tax convention information (as defined under section 6105) may be disclosed, in deciding whether the disclosure is authorized, the authorizing

official must coordinate the disclosure with the U.S. Competent Authority.

§ 301.9000–4 Procedure in the event of a request or demand for IRS records or information.

(a) *Purpose and scope.* This section prescribes procedures to be followed by IRS officers, employees and contractors upon receipt of a request or demand in matters in which a testimony authorization is or may be required.

(b) *Notification of the Disclosure Officer.* Except as provided in paragraphs (c), (d), and (e) of this section, an IRS officer, employee or contractor who receives a request or demand for IRS records or information for which a testimony authorization is or may be required shall notify promptly the disclosure officer servicing the IRS officer's, employee's or contractor's geographic area. The IRS officer, employee or contractor shall await instructions from the authorizing official concerning the response to the request or demand. An IRS officer, employee, or contractor who receives a request or demand in one of the following matters should not notify the disclosure officer, but should follow the instructions in paragraph (c), (d), or (e) of this section, as applicable:

(1) United States Tax Court cases.

(2) Personnel matters, labor relations matters, government contract matters, matters related to informant claims or matters related to the rules of *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388 (1971) (Bivens matters), or matters under the Federal Tort Claims Act (FTCA).

(3) IRS congressional matters.

(c) *Requests or demands in United States Tax Court cases.* An IRS officer, employee or contractor who receives a request or demand for IRS records or information on behalf of a petitioner in a United States Tax Court case shall notify promptly the IRS Office of Chief Counsel attorney assigned to the case. The IRS Office of Chief Counsel attorney shall notify promptly the authorizing official. The IRS officer, employee or contractor who received the request or demand shall await instructions from the authorizing official.

(d) *Requests or demands in personnel, labor relations, government contract, Bivens or FTCA matters, or matters related to informant claims.* An IRS officer, employee or contractor who receives a request or demand, on behalf of an appellant, grievant, complainant or representative, for IRS records or information in a personnel, labor relations, government contract, Bivens or FTCA matter, or matter related to informant claims, shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney assigned to the case. If no IRS Associate Chief Counsel (General Legal Services) attorney is assigned to the case, the IRS officer, employee or contractor shall notify promptly the IRS Associate Chief Counsel (General Legal Services) attorney servicing the geographic area. The IRS Associate Chief Counsel (General Legal Services) attorney shall notify promptly the authorizing official. The IRS officer, employee or contractor who received the request or demand shall await instructions from the authorizing official.

(e) *Requests or demands in IRS congressional matters.* An IRS officer, employee or contractor who receives a request or demand in an IRS congressional matter shall notify promptly the IRS Office of Legislative Affairs. The IRS officer, employee or contractor who received the request or demand shall await instructions from the authorizing official.

(f) *Opposition to a demand for IRS records or information in IRS and non-IRS matters.* If, in response to a demand for IRS records or information, an authorizing official has not had a sufficient opportunity to issue a testimony authorization, or determines that the demand for IRS records or information should be denied, the authorizing official shall request the government attorney or other representative of the government to oppose the demand and respectfully inform the court, administrative agency or other authority, by appropriate action, that the authorizing official either has not yet issued a testimony authorization, or has issued a testimony authorization to the IRS officer, employee or contractor that denies permission to testify or disclose the IRS records or information. If the authorizing official denies authorization in whole or in part, the government attorney or other representative of the government shall inform the court, administrative agency or other authority of the reasons the authorizing official gives for not authorizing the testimony or the disclosure of the IRS records or information or take other action in opposition as may be appropriate (including, but not limited to, filing a motion to quash or a motion to remove to Federal court).

(g) *Procedure in the event of an adverse ruling.* In the event the court, administrative agency, or other authority rules adversely with respect to the refusal to disclose the IRS records or information pursuant to the testimony authorization, or declines to defer a ruling until a testimony authorization has been received, the IRS officer, employee or contractor who has received the request or demand shall, pursuant to this section, respectfully decline to testify or disclose the IRS records or information.

(h) *Penalties.* Any IRS officer or employee who discloses IRS records or information without following the provisions of this section or § 301.9000–3, may be subject to administrative discipline, up to and including dismissal. Any IRS officer, employee or contractor may be subject to applicable contractual sanctions and civil or criminal penalties, including prosecution under 5 U.S.C. 552a(i), for willful disclosure in an unauthorized manner of information protected by the Privacy Act of 1974, or under section 7213 of the Internal Revenue Code, for willful disclosure in an unauthorized manner of return information.

(i) *No creation of benefit or separate privilege.* Nothing in §§ 301.9000–1 through 301.9000–3, this section, and §§ 301.9000–5 and 301.9000–6, creates, is intended to create, or may be relied upon to create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States. Nothing in these regulations creates a separate privilege or basis to withhold IRS records or information.

§ 301.9000–5 Written statement required for requests or demands in non-IRS matters.

(a) *Written statement.* A request or demand for IRS records or information for use in a non-IRS matter shall be accompanied by a written statement made by or on behalf of the party seeking the testimony or disclosure of IRS records or information, setting forth—

(1) A brief description of the parties to and subject matter of the proceeding and the issues;

(2) A summary of the testimony, IRS records or information sought, the relevance to the proceeding, and the estimated volume of IRS records involved;

(3) The time that will be required to present the testimony (on both direct and cross examination);

(4) Whether any of the IRS records or information is a return or is return information (as defined in section 6103(b) of the Internal Revenue Code (Code)), or tax convention information (as defined in section 6105(c)(1) of the Code), and the statutory authority for the disclosure of the return or return information (and, if no consent to disclose pursuant to section 6103(c) of the Code accompanies the request or

demand, the reason consent is not necessary);

(5) Whether a declaration of an IRS officer, employee or contractor under penalties of perjury pursuant to 28 U.S.C. 1746 would suffice in lieu of deposition or trial testimony;

(6) Whether deposition or trial testimony is necessary in a situation in which IRS records may be authenticated without testimony under applicable rules of evidence and procedure;

(7) Whether IRS records or information are available from other sources; and

(8) A statement that the request or demand allows a reasonable time (generally at least fifteen business days) for compliance.

(b) *Permissible waiver of statement.* The requirement of a written statement in paragraph (a) of this section may be waived by the authorizing official for good cause.

§ 301.9000–6 Examples.

The following examples illustrate the provisions of §§ 301.9000–1 through 301.9000–5:

Example 1. A taxpayer sues a practitioner in state court for malpractice in connection with the practitioner's preparation of a Federal income tax return. The taxpayer subpoenas an IRS employee to testify concerning the IRS employee's examination of the taxpayer's Federal income tax return. The taxpayer provides the statement required by § 301.9000–5. This is a non-IRS matter. A testimony authorization would be required for the IRS employee to testify. (In addition, the taxpayer would be required to execute an appropriate consent under section 6103(c) of the Code). The IRS would oppose the IRS employee's appearance in this case because the IRS is a disinterested party with respect to the dispute and would consider the commitment of resources to comply with the subpoena inappropriate.

Example 2. In a state judicial proceeding concerning child support, the child's custodial parent subpoenas for a deposition an IRS agent who is examining certain post-divorce Federal income tax returns of the non-custodial parent. This is a non-IRS matter. The custodial parent submits with the subpoena the statement required by § 301.9000–5 stating as the reason for the lack of taxpayer consent to disclosure that the non-custodial parent has refused to provide the consent (both a consent from the taxpayer complying with section 6103(c) and a testimony authorization would be required prior to the IRS agent testifying at the deposition). If taxpayer consent is obtained, the IRS may provide a declaration or certified return information of the taxpayer. A deposition would be unnecessary under the circumstances.

Example 3. The chairperson of a congressional committee requests the appearance of an IRS employee before the committee and committee staff to submit to questioning by committee staff concerning the procedures for processing Federal employment tax returns. This is an IRS congressional matter. Even though questioning would not involve the disclosure of returns or return information, the questioning would involve the disclosure of IRS records or information; therefore, a testimony authorization would be required. The IRS employee must contact the IRS Office of Legislative Affairs for instructions before appearing.

Example 4. The IRS opens a criminal investigation as to the tax liabilities of a taxpayer. This is an IRS matter. During the criminal investigation, the IRS refers the matter to the United States Department of Justice, requesting the institution of a Federal grand jury to investigate further potential criminal tax violations. The United States Department of Justice approves the request and initiates a grand jury investigation. The grand jury indicts the taxpayer. During the taxpayer's trial, the taxpayer subpoenas an IRS special agent for testimony regarding the investigation. The records and information collected during the administrative stage of the investigation, including the taxpayer's tax returns from IRS files, are IRS records and information. A testimony authorization is required for the IRS special agent to testify regarding this information. However, no IRS testimony authorization is required regarding the information collected by the IRS special agent when the IRS special agent was acting under the direction and control of the United States Attorney's Office in the Federal grand jury investigation. That information is not IRS records or information within the meaning of § 301.9000–1(a). Disclosure of that information should be coordinated with the United States Attorney's Office.

Example 5. The United States Department of Justice attorney representing the IRS in a suit for refund requests testimony from an IRS revenue agent. This is an IRS matter. A testimony authorization would not be required for the IRS revenue agent to testify because the testimony was requested by the government attorney.

Example 6. In response to a request by the taxpayer's counsel to interview an IRS revenue agent who was involved in a case at the administrative level, the United States Department of Justice attorney representing the IRS in a suit for refund asks that the IRS revenue agent be made available to be interviewed. This is an IRS matter. A testimony authorization would be required for the IRS revenue agent to testify because the testimony was first requested by taxpayer's counsel.

Example 7. A state assistant attorney general, acting in accordance with a recommendation from his state's department of revenue, is prosecuting a taxpayer under a state criminal law proscribing the intentional failure to file a state income tax return. The assistant attorney general serves an IRS employee with a subpoena to testify concerning the taxpayer's Federal income tax return filing history. This is a non-IRS matter. This is also a state judicial proceeding pertaining to tax administration within the meaning of section 6103(h)(4) and (b)(4). As such, the requirements of section 6103(h)(4) apply. A testimony authorization would be required for the testimony demand in the subpoena.

Example 8. A former IRS revenue agent is requested to testify in a divorce proceeding. The request seeks testimony explaining the meaning of entries appearing on one party's transcript of account, which is already in the possession of the parties. This is a non-IRS matter. No testimony authorization is required because the testimony requested from the former IRS employee involves general knowledge gained while the former IRS revenue agent was employed with the IRS.

Example 9. A Department of Justice attorney requests an IRS employee to testify in a refund suit involving Taxpayer A. The testimony may include tax convention information, as defined in section 6105, which was originally obtained by the IRS from a treaty partner in connection with a tax case against Taxpayer B. While no testimony authorization is necessary, because the testimony is being requested by government counsel in a tax matter, the IRS employee may not testify (or otherwise disclose IRS records or information) without coordinating with the U.S. Competent Authority, as disclosure of tax convention information is governed by section 6105. The disclosure must also meet the requirements in section 6103(h)(4).

Example 10. In a state court tort action, Defendant subpoenas IRS for Plaintiff's federal income tax returns for particular taxable years. This is a non-IRS matter. The Disclosure Officer instructs Defendant that the IRS has established procedures for obtaining copies of Federal income tax returns. Section 601.702(d)(1) of this chapter establishes the procedures for obtaining Federal tax returns by requiring written requests for copies of tax returns using IRS Form 4506, ''Request for Copy of Tax Return.'' At Defendant's request, Plaintiff executes Form 4506, naming Defendant's counsel as designee, and the form is properly submitted to IRS. A testimony authorization would not be required to disclose Plaintiff's returns to Defendant's counsel.

§ 301.9000–7 Effective date.

These regulations are applicable on February 14, 2005.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding an entry for § 301.9000–5 in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.9000–5	1545–1850
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 3, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–2816 Filed 2–11–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC95

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Document Incorporated by Reference—American Petroleum Institute (API) 510

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is adding a document to be incorporated by reference into the regulations governing oil and gas and sulphur operations in the OCS. The new document, API 510, is titled ''Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration.'' This incorporation will ensure that lessees use the best available and safest technologies while maintaining, repairing and altering pressure vessels in use on the OCS.

DATES: This rule is effective March 16, 2005. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of March 16, 2005.

FOR FURTHER INFORMATION CONTACT: Richard Ensele, Regulations and Standards Branch, at (703) 787–1583.

SUPPLEMENTARY INFORMATION: MMS uses standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry for establishing requirements for activities on the OCS. This practice, known as incorporation by reference, allows us to incorporate the provisions of technical standards into the regulations without increasing the volume of the Code of Federal Regulations (CFR). The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. MMS holds lessees and operators accountable for complying with the documents incorporated by reference in our regulations. The regulations found at 1 CFR part 51 govern how MMS and other Federal agencies incorporate various documents by reference. Agencies can only incorporate by reference through publication in the **Federal Register**. Agencies must also obtain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to the specific edition, or specific edition and supplement or addendum, cited in the regulations.

The rule will incorporate by reference the provisions of the Eighth Edition of API 510 into MMS regulations. MMS has reviewed this document and has determined that the eighth edition should be incorporated into the regulations to ensure the use of the best available and safest technologies.

The proposed rule was published on December 27, 2001 (66 FR 66848) with a 60-day comment period. We received comments from two parties concerning the proposed rule to incorporate API 510. One commenter felt that the National Board Inspection Code (NBIC) was a better document to incorporate for the inspection, repair, rating, and alteration of pressure vessels. MMS agrees that the NBIC is an excellent document. However, we have chosen to adopt the API document. As we stated in the proposed rule, it is the intention of both API and NBIC that their respective scopes not overlap. NBIC advises in its scope that ''It is recognized that an American Petroleum Institute Inspection Code, API–510, exists covering the maintenance inspection, repair, alteration and re-rating procedures for pressure vessels used by the petroleum and chemical process industries, which is applicable in these special circumstances. It is the intent that this Inspection Code (NBIC) cover installations other than those covered by API–510 unless the jurisdiction rules otherwise.''

The second commenter, an industry trade organization, recommended the incorporation of API 510 into the regulations, with the exception of sections 6 and 8.5. Section 6 of API 510 is entitled, ''Inspection and Testing of Pressure Vessels and Pressure Relieving Devices.'' Section 8 is entitled, ''Alternative Rules for Exploration and Production Pressure Vessels.'' Section 6.5 and section 8.5 are both entitled, ''Pressure Relieving Devices,'' with section 8.5 referring back to section 6.5 for specific procedures. The commenter pointed out that MMS has more stringent requirements for pressure relieving devices elsewhere in the regulations (§ 250.804(a)(2) and § 250.1630(a)(1)). MMS agrees. We will incorporate API 510 into the regulations except for sections 6.5 and 8.5, since those two sections pertain specifically to pressure relieving devices. The rest of section 6 pertains to pressure vessels and should be incorporated into the regulations. We will also drop the reference to API 510 that appeared in the proposed rule in 30 CFR 250.803(b)(1)(i) and 30 CFR 250.1629(b)(1)(i), covering pressure safety relief valves.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This rule is not a significant rule under Executive Order 12866. The Office of Management and Budget (OMB) has determined that it is not a significant rule and will not review the rule.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule would have no significant economic impact because the document does not contain any significant revisions that will cause lessees or operators to change their business practices. The document will not require the retrofitting of any facilities. The document may lead to minimal changes in operating practices, but the associated costs will be very minor.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not affect how lessees or operators interact with other agencies. Nor does this rule affect how MMS will interact with other agencies.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule only addresses the maintenance inspection, rating, repair, and alteration of pressure vessels in use on OCS facilities.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department of the Interior (DOI) certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). This rule applies to all lessees and operators that conduct activities on the OCS. Small lessees and operators that conduct activities under this rule would fall under the Small Business Administration's (SBA) North American Industry Classification System codes 211111, Crude Petroleum and Natural Gas Extraction and 213111, Drilling Oil and Gas Wells. Under these codes, SBA considers all companies with fewer than 500 employees to be a small business. MMS estimates that of the 130 lessees and operators that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent). However, because of the extremely high cost and technical complexity involved in exploration and development offshore, the vast majority of lessees and operators that will be affected will be companies with larger revenues.

The API document proposed for incorporation into MMS regulations covers pressure vessels on offshore structures. Offshore structures can cost hundreds of millions of dollars to build and install. The document to be incorporated by this rule has been used by the industry for many years and the latest edition represents the current state-of-the-art industry practices. Boilers and pressure vessels currently being built are being constructed according to the requirements in the American Society of Mechanical Engineers Code. Existing pressure vessel equipment is being inspected and maintained to the requirements of API 510. Additional costs, if any, are already accepted by the industry. As discussed above, MMS does not believe that this rule will have a significant impact on the lessees or operators who explore for and produce oil and gas on the OCS, including those that are classified as small businesses.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call 1–888–REG–FAIR (1–888–734–3247). You may comment to the SBA without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The proposed rule will not cause any significant costs to lessees or operators. The only costs will be the purchase of the new document and minor revisions to some operating and maintenance procedures. The minor revisions to operating and maintenance procedures may result in some minor costs.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The minor increase in cost will not change the way the oil and gas industry conducts business, nor will it affect regional oil and gas prices. Therefore, it will not cause major cost increases for consumers, the oil and gas industry, or any government agencies.

(c) Does not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. All lessees and operators, regardless of nationality, must comply with the requirements of this rule. The rule will not affect competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act (PRA) of 1995

There are no information collection requirements associated with this rule. DOI has determined that this regulation does not contain information collection requirements pursuant to PRA (44 U.S.C. 3501 *et seq.*) We will not be submitting an information collection request to OMB.

Federalism (Executive Order 13132)

According to Executive Order 13132, the rule does not have federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. This rule will simply add one additional document incorporated by reference to ensure that the industry uses the best and safest technologies. This rule does not impose costs on States or localities. Any costs will be the responsibility of the lessees and operators.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, this rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

Takings Implication Assessment (TIA) (Executive Order 12630)

According to Executive Order 12630, this rule does not have significant TIA implications. A TIA is not required. The rule revises existing operating regulations. It does not prevent any lessee or operator from performing operations on the OCS, providing they follow the regulations. Thus, MMS did not need to prepare a TIA according to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

The rule does not have a significant effect on energy supply, distribution, or use because it merely adds a new standard to be incorporated by reference that will provide for uniform maintenance and inspection practices. Thus, a Statement of Energy Supply, Distribution, or Use is not required.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not required.

Unfunded Mandates Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on State, local, and tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement, containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*), is not required.

List of Subjects in 30 CFR Part 250

Environmental impact statements, Environmental protection, Government

contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Outer continental shelf, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: February 2, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR Part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

■ 2. In § 250.198, in the table in paragraph (e), a new entry for document API 510 is added in alphanumeric order to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of document	Incorporated by reference at
* * *	* *
API 510, Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration, except for Sections 6.5 and 8.5, Eighth Edition, June 1997, API Stock No. C51008.	§ 250.803(b)(1). § 250.1629(b)(1).

■ 3. In § 250.803, paragraph (b)(1) introductory text is revised to read as follows:

§ 250.803 Additional production system requirements.

* * * * *

(b) * * *

(1) *Pressure and fired vessels.* Pressure and fired vessels must be designed, fabricated, and code stamped in accordance with the applicable provisions of Sections I, IV, and VIII of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. Pressure and fired vessels must have maintenance inspection, rating, repair, and alteration performed in accordance with the applicable provisions of the American Petroleum Institute's Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration API 510 (except Sections 6.5 and 8.5), which is incorporated by reference in § 250.198

* * * * *

■ 4. In § 250.1629, paragraph (b)(1) introductory text is revised to read as follows:

§ 250.1629 Additional production and fuel gas system requirements.

* * * * *

(b) * * *

(1) Pressure and fired vessels must be designed, fabricated, and code stamped in accordance with the applicable provisions of sections I, IV, and VIII of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. Pressure and fired vessels must have maintenance inspection, rating, repair, and alteration performed in accordance with the provisions of the American Petroleum Institute's Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration, API 510 (except Sections 6.5 and 8.5), which is incorporated by reference in § 250.198.

* * * * *

[FR Doc. 05–2746 Filed 2–11–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–ZA01

Terrorism Risk Insurance Program; Technical Amendments to ''Make Available'' Provision and ''Insurer Deductible'' Definition

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program ends on December 31, 2005. This final rule makes minor technical changes to Subpart A of Part 50 of Title 31. One change conforms existing regulations to the June 18, 2004 determination by the Secretary of the Treasury to extend the ''make available'' provisions of section 103(c) of the Act through the third year of the Program (calendar year 2005). A second change clarifies the definition of the insurer deductible for Program Year 3 for certain newly formed insurers to more closely parallel the language of the Act.

DATES: This final rule is effective February 14, 2005.

FOR FURTHER INFORMATION CONTACT: David Brummond, Legal Counsel, or Howard Leikin, Senior Insurance Advisor, Terrorism Risk Insurance Program, (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving state insurance regulation and consumer protections.

Title I of the Act establishes a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, which as defined in the Act is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, and to issue regulations and procedures. The Program provides a Federal reinsurance backstop for three years. The Program ends on December 31, 2005. Thereafter, the Act provides Treasury with certain continuing authority to take actions as necessary to ensure payment, recoupment, adjustments of compensation, and reimbursement for insured losses arising out of any act of terrorism (as defined under the Act) occurring during the period between November 26, 2002, and December 31, 2005.

Each entity that meets the definition of ''insurer'' (well over 2000 firms) must participate in the Program. The amount of the Federal share of an insured loss resulting from an act of terrorism is to be determined based upon insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act and the implementing regulations. An insurer's deductible increases each year of the

Program, thereby reducing the Federal Government's share prior to expiration of the Program. An insurer's deductible is calculated based on a percentage of the value of direct earned premiums collected over certain statutory periods. Once an insurer has met its deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an annual industry-aggregate limit of $100 billion.

II. The ''Make Available'' Provision

The mandatory availability or ''make available'' provisions in section 103(c) of the Act require that, for Program Year 1, Program Year 2, and, if so determined by the Secretary, for Program Year 3, all entities that meet the definition of insurer under the Program must make available in all of their commercial property and casualty insurance policies coverage for insured losses resulting from an act of terrorism. This coverage cannot differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than acts of terrorism.

A. Secretary Determination

The Act requires the Secretary of the Treasury to determine, not later than September 1, 2004, whether to extend the make available requirements through Program Year 3, based on factors referenced in section 108(d)(1) of the Act. The factors referred to in section 108(d)(1) of the Act are:

- The ''effectiveness of the Program;''
- The ''likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program;'' and
- The ''availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.''

On May 5, 2004, Treasury published a request for comments in the **Federal Register** and solicited comments and information concerning the statutory factors in section 108(d)(1) of the Act to assist the Secretary with the ''make available'' determination. See 69 FR 25168 (May 5, 2004). The comment period closed on June 4, 2004, and nearly 200 comments were received.

On June 18, 2004, the Secretary announced his decision to extend the ''make available'' requirements through Program Year 3. (*See http://www.treas.gov/press/releases/js1734.htm; http://www.treas.gov/press/releases/js1735.htm*). This final rule conforms the Act's implementing regulations to reflect the Secretary's determination.

B. The Final Rule

This final rule amends section 50.20(b), which was previously reserved, and section 50.21 to reflect the Secretary's determination to extend the ''make available'' provisions of section 103(c) of the Act through Program Year 3 (calendar year 2005). The amendment to section 50.20(b) also specifically clarifies that insurers are not required to provide coverage for insured losses resulting from acts of terrorism beyond the date the Program expires and the Federal backstop no longer exists.

III. Insurer Deductible—Newly Formed Insurers

The Act defines ''Insurer Deductible'' in Section 102(7) for the various ''Program Years'' of the Program. Section 102(7)(E) provides that notwithstanding the general rules for each Program Year, if an insurer has not had a full year of operations during the calendar year immediately preceding the applicable Program Year, the ''insurer deductible'' is ''such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums.''

The current regulation at Section 50.5(g)(2) provides that for an insurer that came into existence after November 26, 2002, the insurer deductible will be based on data for direct earned premiums for the current Program Year, and that if the insurer has not had a full year of operations during the applicable Program Year, the direct earned premiums for the current Program Year will be annualized.

Treasury proposed this rule recognizing that new companies would have limited business operations, that their premium income likely would be somewhat volatile, and that this volatility could persist throughout the life of the Program. 68 FR 9811 (Feb. 28, 2003). Two commenters generally supported Treasury's determination that premiums for new insurers would be annualized in the calculation of their insurer deductible. 68 FR 41263 (July 11, 2004). In revisiting this matter at this point in the Program, however, Treasury has concluded that while the concern about new company premium income volatility remains valid, the Act provides specific guidance in the case where an insurer was not in existence on November 26, 2002 but nevertheless has had a full year of operations in the year preceding Program Year 3, the last year of the Program. The final rule addresses such a circumstance by adding a new section 50.5(g)(3) for Program Year 3 with language that more closely parallels the statutory language of the Act.

Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Treasury has issued and will be issuing additional regulations to implement the Program. This final regulation makes two technical changes. First, it amends section 50.20(b) (previously reserved) to reflect the Secretary's decision to extend the ''make available'' provisions of section 103(c) of the Act through Program Year 3 (calendar year 2005). Second, the regulation clarifies the definition of ''insurer deductible'' to more closely parallel the language in the Act. The first change reflects a determination already made and announced. The second change merely clarifies the regulation and conforms it to the language of the Act.

For these reasons, Treasury has determined that notice and public comment are unnecessary and contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B) and, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for this final rule to become effective immediately upon publication.

This final rule is not a significant regulatory action for purposes of Executive Order 12866. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C. 6701 note).

■ 2. Subpart A of part 50 is amended by adding § 50.5(g)(3) to read as follows:

§ 50.5 Definitions.

* * * * *

(g) *Insurer deductible* means:

* * * * *

(3) Notwithstanding paragraph (g)(2) of this section, the insurer deductible for Program Year 3 (January 1, 2005 through December 31, 2005) for an insurer that has not had a full year of operations during calendar year 2004 will be based on annualized data for the insurer's direct earned premiums for Program Year 3, multiplied by 15 percent. For an insurer that came into existence after November 26, 2002 and has had a full year of operations during calendar year 2004, the insurer deductible for Program Year 3 is the value of an insurer's direct earned premiums over calendar year 2004, multiplied by 15 percent.

■ 3. Subpart A of part 50 is amended by revising § 50.20(b) to read as follows:

§ 50.20 General mandatory availability requirements.

* * * * *

(b) *Program Year 3—calendar year 2005.* In accordance with the determination of the Secretary announced June 18, 2004, an insurer must comply with paragraphs (a)(1) and (a)(2) of this section during Program Year 3. Notwithstanding paragraph (a)(2) of this section and § 50.23(a), property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2005 (the last day of Program Year 3) even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

■ 4. Subpart A of part 50 is amended by revising § 50.21(a) to read as follows:

§ 50.21 Make available.

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies to policies in existence on November 26, 2002, new policies issued and renewals of existing policies during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), and to new policies issued and renewals of existing policies in Program Year 3 (calendar year 2005). The requirement applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

* * * * *

Dated: February 1, 2005.

Gregory Zerzan,

Acting Assistant Secretary of the Treasury.

[FR Doc. 05–2810 Filed 2–11–05; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–036]

RIN 1625–AA09

Drawbridge Operation Regulation; St. Croix River, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is changing the regulation governing the Stillwater Highway Drawbridge, across the St. Croix River at Mile 23.4, at Stillwater, Minnesota. Under this rule, the drawbridge need not open for river traffic and may remain in the closed-to-navigation position from midnight, October 14, 2005, until midnight, March 15, 2006. This rule allows time to perform maintenance and repairs to the bridge.

DATES: This rule is effective from midnight, October 14, 2005 until midnight, March 15, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket [CGD08–04–036] and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Commander (obr), Eighth Coast Guard District, maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 5, 2004, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; St. Croix River, Minnesota,'' in the **Federal Register** (69 FR 64553). We received no comment letters on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On September 13, 2004, the Minnesota Department of Transportation, requested a temporary change to the operation of the Stillwater Highway Drawbridge across the St. Croix River, Mile 23.4, at Stillwater, Minnesota to allow the drawbridge to remain in the closed-to-navigation position for 152 consecutive days for critical repairs and maintenance.

The Stillwater Highway Drawbridge navigation span has a vertical clearance of 10.9 feet above normal pool in the closed to navigation position.

Navigation on the waterway consists primarily of commercial and recreational watercraft and will not be significantly impacted due to the reduced navigation in winter months. Presently, the draw opens from October 16 until May 14 with 24 hours advance notice for passage of river traffic. The Minnesota Department of Transportation requested the drawbridge be permitted to remain closed-to-navigation from midnight, October 14, 2005 until midnight, March 15, 2006. Winter conditions on the St. Croix River will preclude any significant navigation demands for the drawspan opening. Performing maintenance on the bridge during the winter, when the number of vessels likely to be impacted is minimal, is preferred to bridge closure or advance notification requirements during the navigation season. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators.

Discussion of Comments and Changes

The Coast Guard received no comment letters. No changes will be made to this final rule.

Regulatory Evaluation

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

The Coast Guard expects that this temporary change to the operation of the Stillwater Highway Drawbridge will have minimal economic impact on commercial traffic operating on the St. Croix River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridge's regular operation.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–REG–FAIR (1–800–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From midnight, October 14, 2005, until midnight, March 15, 2006, in § 117.667, suspend paragraph (b) and add a new paragraph (f) to read as follows:

§ 117.667 St. Croix River.

* * * * *

(f) The Stillwater Highway Drawbridge, mile 23.4, St. Croix River, at Stillwater, Minnesota, need not open for river traffic and may be maintained in the closed-to-navigation position.

Dated: January 26, 2005.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 05–2797 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0004; FRL–7872–7]

Approval and Promulgation of State Implementation Plans; Texas; Revision to the Rate of Progress Plan for the Houston/Galveston (HGA) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP) Post-1999 Rate of Progress (ROP) Plan, the 1990 Base Year Inventory, and the Motor Vehicle Emissions Budgets (MVEB) established by the ROP Plan, for the Houston Galveston (HGA) ozone nonattainment Area submitted November 16, 2004. The intended effect of this action is to approve revisions submitted by the State of Texas to satisfy the reasonable further progress requirements for 1-hour ozone nonattainment areas classified as severe and demonstrate further progress in reducing ozone precursors. We are approving these revisions in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on April 15, 2005, without further notice, unless EPA receives relevant adverse comment by March 16, 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 Material in EDocket (RME) ID No. R06–OAR–2005–TX–0004, 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 Material 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 on-line instructions for submitting comments.

U.S. 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 cc 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 Regional Material in EDocket (RME) ID No. R6–OAR–2005–TX–0004 The 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 Material 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 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, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material 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 docket materials 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 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Guy Donaldson, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7242, *donaldson.guy@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Action Are We Taking?

We are approving revisions to the HGA area post-1999 ROP Plan for the 2000–2002, 2003–2005 and 2006–2007 time periods submitted in a letter dated November 16, 2004. The post-1999 ROP

plan is designed to achieve an additional 9 percent reduction in emissions between 1999 and 2002, a further 9 percent reduction between 2002 and 2005, and another further 9 percent reduction between 2005 and 2007. We are also approving revisions to the 1990 base year inventory and the ROP Plan's associated Motor Vehicle Emissions Budgets (MVEB) for 2002, 2005 and 2007. This plan replaces previous versions of the post-1999 rate of progress plan, the 1990 base year inventory, and mobile vehicle emissions budgets contained in the post-1999 ROP plan, that were approved November 14, 2001 (66 FR 57160).

Why Are These Revisions Necessary?

On November 16, 2004, the State of Texas submitted the proposed revisions reflecting the use of EPA's new MOBILE6 model. We released this new model on January 29, 2002. (See 67 FR at 4254). Using MOBILE6 to calculate the 2002, 2005 and 2007 ROP target levels requires a revision to the 1990 base year inventory which is the planning base line from which the ROP targets are calculated. Texas updated the 1990 base year inventory for the HGA area to reflect the use of MOBILE6. This affected the base year on-road mobile source inventory as well as the projected emissions reductions in 2005 and 2007 from mobile source control programs. Texas also made a number of other changes as a result of updated information.

These revisions result from Texas incorporating the following updated information into the plan:

- New on-road mobile emissions estimates based on the latest emissions model, MOBILE6, and the effects of the latest census information and most recent planning assumptions.
- New off-road mobile emission estimates using the new NONROAD emissions model and several area specific activity level studies.
- New future emission estimates because three rural counties, Waller, Liberty and Chambers, have been dropped from the I/M program.
- The future NO_X estimates include relaxation of the industrial NO_X rules from a nominal 90% control to a nominal 80% control.
- New future emissions estimates that do not include emission reduction projections from the Texas Low Emission Diesel program. Note, Low Emission Diesel is still required by the TCEQ rules. It is just not credited to the Rate of Progress plan.

What Are the Clean Air Act's Rate of Progress Requirements?

Section 182(c)(2) of the CAA requires each State to submit for each serious and above ozone nonattainment area a SIP revision, which describes, how the area will achieve an actual volatile organic compound (VOC) emission reduction from the baseline emissions of at least 3 percent of baseline emissions per year averaged over each consecutive 3-year period beginning 6 years after enactment (i.e., November 15, 1996) until the area's attainment date. The Clean Air Act does not allow States to take credit for emission reductions due to Federal Motor Vehicle Controls adopted prior to 1990 or corrections to reasonably available control technology or vehicle inspection and maintenance programs. Section 182(c)(2)(C) explains the conditions under which reductions of oxides of nitrogen (NO_X) may be substituted for reductions in VOC emissions for post 1996 and post 1999 ROP plans.

Why Control Volatile Organic Compounds and Oxides of Nitrogen?

VOCs participate in chemical reactions with oxides of nitrogen (NO_X) and oxygen in the atmosphere in the presence of sunlight to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It can also worsen bronchitis, asthma and reduce lung capacity.

EPA has established National Ambient Air Quality Standards for Ozone. The previously adoptedStandard of 0.12 ppm averaged over an 1 hour period is being phased out and replaced with a newStandard of 0.08 ppm averaged over an 8 hour period. The 1-hour standard will be revoked on June 15, 2005.

Areas that do not meet a National Ambient Air Quality Standard are subject to nonattainment requirements of the Clean Air Act. Air quality in HGA does not meet either the 1-hour or the 8-hour NAAQS for ozone. As such, the area is subject to the ROP requirements of section 182 of the Clean Air Act. The revised ROP plan approved today was developed in response to a 1-hour ozone requirement. Under the antibacksliding provisions of the Phase I ozone implementation rule, published on April 30, 2004 (69 FR 69 FR 23951), these rate of progress requirements must remain in effect. In the future, TCEQ will have to submit a new Rate of Progress Plan to meet the 8 hour requirements.

How Has Texas Demonstrated Compliance With Rate of Progress Requirements?

Table 1 and Table 2 show the target levels and the projected controlled VOC and NO_X emissions for each of the milestone years in the SIP. EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity.'' [1]

The target levels are calculated by subtracting the needed percentage reductions for each ROP milestone year and any non-creditable reductions from the 1990 base year levels. Projected future-year emissions for 2005 and 2007 were developed by projecting from the State's 2002 Emission Inventory—actual emission inventory estimates reported for 2002. The projections for 2005 and 2007 were determined based on growth estimates using EPA approved methodologies and imposition of Federal and SIP-approved state enforceable controls. The two tables demonstrate that estimated emissions in 2002 and projected emissions in 2005 and 2007 are well below the target levels for each of the milestone years. In other words, the TCEQ has shown that there will be more emission reductions than are required to meet each milestone's target level. For a complete discussion of EPA's evaluation of TCEQ's calculation of target levels and emission projections, see the technical support document for this action.

TABLE 1.—ACTUAL AND PROJECTED NO_X EMISSIONS

(tons/day)

Category\year	1990	2002	2005	2007
Projected Emissions	1345.8	843.57	699.65	550.25

[1] Memorandum, ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity,'' issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

TABLE 1.—ACTUAL AND PROJECTED NO_X EMISSIONS—Continued

(tons/day)

Category\year	1990	2002	2005	2007
Target Level	NA	1088.24	945.57	866.54

The reductions in projected emissions shown in Table 1 result from a variety of measures including post-1990 Federal motor vehicle control programs, NO_X reasonably available control technology, and controls on lean burn engines. The revised ROP Plan does not rely upon any new controls that were not part of the previously approved ROP plan; rather, the changes in the numbers are mainly due to the MOBILE6 revised emissions projections for the on road motor vehicle emissions and the adjustments to State's rules for I/M and industrial NO_X emissions. As in the previous plan, the largest contributor to NO_X emission reductions continues to be the controls on industrial NO_X emissions. This continues to be the case even with the relaxation of the rules from 90 to 80% nominal control.

It is worth noting that the 2005 and 2007 projections above do not include all of the emission reductions expectedin the Houston/Galveston area including reductions from the Texas Emission Reduction Program.

TABLE 2.—ACTUAL AND PROJECTED VOC INVENTORIES

[tons/day]

Category\year	1990	2002	2005	2007
Total	1111.21	557.55	523.66	507.13
Target	NA	726.7	715.7	714.8

As can be seen in Table 2, the VOC emission reductions were largely realized between 1990 and 2002. These VOC reductions result from post-1990 Federal motor vehicle emission control programs, the Texas I/M program and a variety of point source measures implemented as part of the area's ROP plans for the 1990–1996 and 1997–1999 time periods. These plans were previously approved November 14, 2001 (66 FR 57160) and April 25, 2001 (66 FR 20746). The revised numbers are due primarily to the use of MOBILE6 and improvements to the area and non-road inventories.

What Are the Revisions to the 1990 Base Year Inventory?

Table 3 summarizes the changes to the approved 1990 base year inventory. For a full discussion of EPA's evaluation, see the technical support document for this action.

TABLE 3.—1990 RATE-OF-PROGRESS BASE YEAR EMISSIONS INVENTORY

[Base Year Inventory (tons per day)]

Source type	VOC		NO_X	
	Old	New	Old	New
Point	483.28	483.28	794.85	794.85
Area	200.07	208.17	14.37	57.57
On-road Mobile	251.52	321.70	337.03	391.10
Non-road Mobile	129.98	97.96	198.08	112.28
Total	1064.85	1111.21	1344.4	1355.8

The columns denoted as old were the 1990 base year emission inventories approved November 14, 2001 (66 FR 57160). The changes to the inventory result from the use of the more recent version of EPA's model for estimating on-road mobile source emissions, MOBILE6, the more recent emissions model for missions from off-road mobile source, NONROAD, and several area-specific studies of activity levels.

What Are the Motor Vehicle Emissions Budgets Established in the Plan?

Table 4 documents the motor vehicle emissions budgets that have been established by this post-1999 ROP Plan revision. A motor vehicle emission budget is that portion of the total allowable emissions defined in the SIP revision allocated to on-road mobile sources for a certain date for the purpose of meeting the purpose of the SIP, in this case reasonable further progress towards attainment of the NAAQS. EPA's conformity rule (40 CFR part 51, subpart T and part 93, subpart A) require that transportation plans, programs and projects in nonattainment or maintenance areas conform to the SIP. The motor vehicle emissions budget is one mechanism EPA has identified for demonstrating conformity. Upon the effective date of this SIP approval, all future transportation improvement programs and long range transportation plans for the Houston/Galveston area will have to show conformity to the budgets in this plan; previous budgets approved or found adequate will no longer be applicable.

TABLE 4.—SIP ROP MOTOR VEHICLE EMISSIONS BUDGETS

[tons per day]

Year	NO_X	VOC
2002	326.6	132.0
2005	257.3	104.2
2007	210.0	90.0

Final Action

The EPA is approving the aforementioned changes to the Texas SIP because the revisions are consistent with the Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the EPA views this as a non-controversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 15, 2005 without further notice, unless EPA receives relevant adverse comment by March 16, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 15, 2005, and no further action will be taken on the proposed rule.

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. section 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 15, 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, Reporting and recordkeeping requirements.

Dated: February 2, 2005.

Richard 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. 7401 *et seq.*

Subpart SS—Texas

■ 2. The second table in § 52.2270(e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended as follows:

■ a. By removing the entry for ''Post 1999 Rate of Progress Plans and associated contingency measures'' for the Houston/Galveston, TX, area approved by EPA 11/14/01 at 66 FR 57195;

■ b. By adding two new entries to the end of the table for ''Post 1999 Rate of Progress Plans'' and for ''Revisions to the 1990 Base Year Inventory,'' both for the Houston/Galveston, TX area.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal\effective date	EPA approval date	Comments
* *	* *	*	* *	*
Post 1999 Rate of Progress Plan ...	Houston/Galveston, TX	11/16/04	February 14, 2005. [Insert FR page number where document begins].	
Revisions to the 1990 Base Year Inventory.	Houston/Galveston, TX	11/16/04	February 14, 2005. [Insert FR page number where document begins].	

[FR Doc. 05–2791 Filed 2–11–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 303

[Docket No. FMCSA–2002–13248]

RIN 2126–AA79

Title VI Regulations for Federal Motor Carrier Safety Administration Financial Assistance Recipients

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim Final Rule (IFR); request for comments.

SUMMARY: FMCSA issues this Interim Final Rule (IFR) to clarify and modify the applicability of certain Federal Highway Administration (FHWA) and Departmental Title VI provisions that implement Title VI of the Civil Rights Act of 1964, and related nondiscrimination statutes, as they apply to FMCSA Federal financial assistance recipients. The ''savings provision'' of section 106(b) of the Motor Carrier Safety Improvement Act of 1999 provides the opportunity for this clarification and modification. As part of this initiative, FMCSA establishes a new Part 303 under 49 CFR chapter III, Subchapter A, for future FMCSA Title VI implementing regulations and any future guidelines on Title VI compliance.

This IFR will provide FMCSA with initial guidelines and procedures for implementing its Title VI procedures. This will be done by continuing to apply and use the Departmental umbrella Title VI regulations in 49 CFR part 21 to any program or activity for which Federal financial assistance is authorized under a law administered by FMCSA. FMCSA will remain subject to those Title VI requirements at the Departmental level, and will develop as needed further guidelines and procedures in accordance with the law to assure effective and consistent implementation for financially assisted recipients. FMCSA also removes itself from the FHWA Title VI regulations set forth at 23 CFR part 200, because they are not appropriate for FMCSA programs and activities. Doing so will avoid any potential confusion while not altering the substantive Title VI obligations of FMCSA and its grantees.

DATES: This Interim Final Rule is effective March 16, 2005. We must receive your comments by April 15, 2005.

ADDRESSES: You may submit comments identified by the FMCSA docket number and/or Regulatory Identification Number (RIN) of this interim rule by any one of the following methods:

- *Comments submitted by mail, in person, or Fax.*

U.S. Department of Transportation, Docket Management System (DMS) Facility, 400 Seventh Street, SW., Plaza Level, Washington, DC 20590; or *FAX* (202) 493'2251. You may examine the FMCSA docket, including any comments we have received, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Comments filed electronically.*

DMS Web site at *http://dms.dot.gov*; or

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

- *Privacy Act:*

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 by on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Waiver of General Notice of Proposed Rulemaking

FMCSA is issuing this Interim Final Rule (IFR) without prior notice and opportunity for comment pursuant to the Administrative Procedure Act (5 U.S.C. 553(b)). This provision allows an agency to issue a final rule without notice and opportunity to comment when the agency for good cause finds that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. This IFR clarifies the Title VI authorities covering FMCSA programs by deleting references specific to only FHWA programs and by stating specifically the applicability of the Department-wide Title VI regulations to FMCSA. Doing so will avoid any potential confusion while not altering the substantive Title VI obligations of FMCSA and its grantees. Under these circumstances, FMCSA has determined that an opportunity for notice is unnecessary, impracticable, or contrary to the public interest. We will respond to any comments we receive, and will amend the IFR if comments warrant any changes.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Sevier, (202) 366–4330, Office of Civil Rights (MC–CR), FMCSA, 400 Seventh Street, SW., Washington, DC 20590; *Carmen.Sevier@fmcsa.dot.gov*. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In early October 1999, Congress prohibited the FHWA from spending appropriated funds to carry out the motor carrier safety functions and

operations of its former Office of Motor Carrier and Highway Safety, unless the Secretary of Transportation (Secretary) redelegated that authority outside of the FHWA (*see* Pub. L. 106–69, 113 Stat. 986, at 1022 (October 9, 1999)). Thereafter, the Department created the Office of Motor Carrier Safety (OMCS) within DOT to carry out the duties and powers related to motor carrier safety vested in the Secretary.

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 105–159, 113 Stat. 1748). MCSIA created a new modal administration within the DOT—the Federal Motor Carrier Safety Administration—and transferred certain motor carrier safety and related responsibilities from the former OMCS to FMCSA. The FMCSA is charged with enforcing motor carrier safety requirements previously enforced by OMCS and its predecessors.

To accommodate the organizational change, the Office of the Secretary published a final rule on January 4, 2000 (65 FR 220), rescinding authority previously delegated to the former OMCS, and redelegated it to the Administrator of the FMCSA beginning January 1, 2000. Prior to MCSIA, the powers and authorities transferred to the FMCSA had been exercised by various entities within the Department, including FHWA. To preserve actions previously taken under such powers, section 106(b) of MCSIA contained a ''savings provision.'' Among other things, the savings provision preserved for FMCSA the applicability of various rules and regulations that were applicable to its predecessor agencies and offices. Included within such regulations are certain FHWA nondiscrimination protections and provisions that implement Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d, *et seq.*, and related nondiscrimination statutes). The FHWA regulations, located in 23 CFR part 200, are applicable to recipients of Federal grant and cooperative agreement aid. Those regulations, which FHWA had promulgated in 1975 and 1976, supplemented the Departmental umbrella Title VI protections contained in 49 CFR part 21.

Title VI

Title VI states that ''No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.'' In addition, Title VI and the other related nondiscrimination statutes [1] bar intentional discrimination, as well as disparate impact discrimination, which is a neutral policy or practice that has an unequal and adverse impact on protected groups.

Applicability of FHWA Title VI Provisions to FMCSA

The FHWA regulations set forth at 23 CFR part 200 provide guidance on how FHWA will implement its Title VI compliance and define the role and responsibilities of State transportation agencies in ensuring compliance with Title VI. We have reviewed those regulations in light of FMCSA's motor carrier safety objectives as a new modal agency within the Department. We have concluded that those FHWA regulations in 23 CFR part 200 do not meet the needs of FMCSA Federal financial assistance recipients. This is because FHWA non-discrimination policies and procedures are geared toward highway planning and development, which generally involve much larger financial commitments than programs or activities of the FMCSA. Alternatively, the Departmental level implementing regulations in 49 CFR part 21 specify the manner and degree to which recipients must comply, and the basic recordkeeping requirements necessary to meet the intent of the nondiscrimination statutes. The Departmental regulations are broader in scope and therefore do not involve the degree of specificity required by the FHWA regulations. We have concluded that these broader regulations are more appropriate for the level of financial assistance involved in FMCSA programs or activities. For that reason, FMCSA clarifies and modifies the applicability of the FHWA Title VI provisions, and the Departmental level provisions, as they apply to FMCSA.

Programs or Activities

Under this interim rule, FMCSA Federal financial assistance recipients must comply with the Title VI regulations in 49 CFR part 21 for FMCSA-only programs or activities. As noted above, FMCSA believes the less cumbersome but equally effective Departmental provisions better accommodate the interests of State agencies and other recipients by providing them with more streamlined Title VI procedures than those established in 23 CFR part 200. FMCSA established a new Part 303 in 49 CFR chapter III, Subchapter A, for its new Title VI implementing regulations. This will be done by adopting the Departmental Title VI provisions under 49 CFR part 21. FMCSA will remain subject to those requirements, and may develop further guidelines and procedures in accordance with the law to assure effective implementation by recipients.

For Joint or Multi-agency programs or activities, FMCSA recipients must follow the requirements of 49 CFR part 21 unless an agreement is reached by the Federal funding agencies for the recipients to use those Title VI procedures of the Federal lead agency.[2]

Conclusion

FMCSA has carefully weighed the benefits to be gained by clarifying and modifying Title VI regulations applicable to the agency. By taking the agency out from under FHWA Title VI regulations, this action will likely increase grant and cooperative agreement participation levels for FMCSA programs or activities by simplifying reporting requirements. The FHWA Federal-aid programs or activities tend to be much more costly than the FMCSA financially assisted programs or activities. It will also lower administrative costs for grantees in carrying out their Title VI responsibilities. FMCSA will continue to apply and use the adequate Title VI protections under the Departmental umbrella regulations at 49 CFR part 21.

[1] Nondiscrimination Program Requirements

1. *Title VI of the Civil Rights Act of 1964*—''No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.''

2. *Age Discrimination Act of 1975*—''No person in the United States shall, on the basis of *age* be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.''

3. *Section 504. Rehabilitation Act of 1973*—''No *qualified handicapped person* shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.''

4. *Title IX of the Education Amendments Act of 1972* prohibits discrimination on the basis of sex, in education and training programs provided by recipients of Federal financial assistance. Title IX is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution.

[2] The Federal lead agency is the agency that provides the most overall funding to the recipient.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This Interim Final Rule (IFR) is considered a non-significant regulatory action within both the meaning of Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. We anticipate that the economic impact of this IFR will be negligible, because all FMCSA Federal financial assistance recipients are currently complying with the requirements of Title VI. In fact, we have determined that there probably will be no cost impacts, because this IFR merely clarifies and modifies the applicability of certain Title VI provisions of the FHWA and of the Department as they concern FMCSA's Federal financial assistance recipients under the motor carrier safety program. This IFR also establishes a new Part 303 in 49 CFR chapter III, Subchapter A, to provide FMCSA with new Title VI implementing regulations, as well as any further procedures for ensuring compliance with Title VI. This has been done by adopting the Department's longstanding Title VI regulations at 49 CFR part 21. Thus, no regulatory analysis or evaluation accompanies this IFR. We invite comments from the public, however, to assess any potential costs or burdens that may be associated with this IFR.

Regulatory Flexibility Act

FMCSA has evaluated the effects of this rule on small entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act. By taking itself out from under the FHWA's Title VI reporting and procedural requirements, because they are not appropriate for the level of financial assistance in FMCSA's programs, the agency will ease the compliance standards for Title VI by all prospective FMCSA Federal-aid recipients. The IFR thus may have a limited, positive economic impact on small entities, among others. Accordingly, FMCSA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1532, *et seq.*) requires Federal agencies to assess the effects of its regulatory actions on State, local, or tribal governments, or on the private sector. Any agency promulgating a proposed or final rule likely to result in a Federal mandate requiring expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year must prepare a written assessment of the costs, benefits, and other effects. In any event, regulations implementing civil rights requirements are explicitly excluded from unfunded mandates consideration. Thus, FMCSA has determined that this IFR will not have an annual impact of $100 million or more.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999. We have determined that this action will not have a substantial direct effect on, or sufficient federalism implications for the States, nor will it limit the policymaking discretion of the States. Nothing in this IFR directly preempts any State law or regulation.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

FMCSA has analyzed this action in accordance with the principles and criteria in Executive Order 13175, dated November 6, 2000. We believe this action will not significantly or uniquely affect the communities of Indian tribal governments and will not impose substantial direct compliance costs. Accordingly, Executive Order 13175 does not apply to this IFR.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this IFR under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). It is a procedural action, is not economically significant, and will not likely have significant adverse effect on the supply, distribution, or use of energy.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. We have determined that this IFR will not contain an information collection requirement for purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action meets the 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.

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997) has special requirements that apply to certain rules that are economically significant under E.O. 12866. This IFR is not economically significant. Accordingly, Executive Order 13045 does not apply to this IFR.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, ''Improving Access to Services for Persons With Limited English Proficiency'' (LEP) applies to Federally assisted programs. It requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency.

Its purpose is to clarify for Federal-fund recipients the reasonable steps those recipients should take to ensure that its programs or activities are meaningfully accessible to individuals who are LEP. To this end, the Executive Order on LEP requires each Federal agency to provide guidance on Federal financial assistance to ensure that the recipients' programs or activities are meaningfully accessible.

In developing its Title VI program, the agency will explore whether additional outreach to LEP individuals is

appropriate. FMCSA will be operating under DOT LEP guidance. Thus, this IFR complies with the principles enunciated in the Executive Order.

National Environmental Policy Act

This IFR is categorically excluded from environmental studies under paragraph 6.a. of the FMCSA Environmental Order 5610.1C dated March 1, 2004 (69 FR 9680). This IFR merely clarifies and modifies FMCSA's Title VI program, the applicability of both the FHWA's and the Department's Title VI provisions, and establishes a new part in 49 CFR chapter III, Subchapter A, for civil rights matters.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN located in the heading of this document is used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 303

Civil Rights, Implementation and review procedures, Title VI compliance program, Title VI program and related statutes, Transportation.

■ Based on the foregoing, FMCSA adds a new Part 303 for Civil Rights under 49 CFR chapter III, Subchapter A, to read as follows:

PART 303—CIVIL RIGHTS

Sec.
303.1 Purpose.
303.3 Application of this part.

Authority: Public Law 105–159, 113 Stat. 1748, Title I, sections 107(a) and 106 (Dec. 9, 1999) (49 U.S.C. 113); 42 U.S.C. 2000d, *et seq.*; and 49 CFR 1.73.

§ 303.1 Purpose.

The purpose of this part is to provide guidelines and procedures for implementing the Federal Motor Carrier Safety Administration's (FMCSA) Title VI program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations. For FMCSA-only programs or activities, Federal financial assistance recipients or grantees will continue to apply and use the Departmental Title VI provisions at 49 CFR part 21. For joint and multi-agency programs/projects, FMCSA Federal assistance recipients or grantees must use the Title VI requirements at 49 CFR part 21, unless agreement is reached by the Federal funding agencies for the recipients to use the Title VI procedures of another agency.

§ 303.3 Application of this part.

The provisions of this part are applicable to all elements of the FMCSA and to any program or activity for which Federal financial assistance is authorized under a law administered by the FMCSA. This part provides Title VI guidelines for State Departments of Transportation and local State agencies, including their sub-recipients, to implement Title VI. It also applies to money paid, property transferred, or other Federal financial assistance extended under any program of the FMCSA after the date of this part.

Issued on: February 7, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–2768 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 555, 567, 568, and 571

[Docket No. NHTSA–99–5673]

RIN 2127–AE27

Vehicles Built in Two or More Stages

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

ACTION: Final rule.

SUMMARY: The final rule amends four different parts of title 49 to address the certification issues related to vehicles built in two or more stages and, to a lesser degree, to altered vehicles. The amendments allow the use of pass-through certification so that it can be used not only for multi-stage vehicles based on chassis-cabs, but also for those based on other types of incomplete vehicles. The amendments also create a new process under which intermediate and final-stage manufacturers and alterers can obtain temporary exemptions from dynamic performance requirements, and provide an automatic one year of additional lead time for new safety requirements for intermediate and final-stage manufacturers and alterers, unless the agency determines with respect to a particular requirement that a longer or shorter time period is appropriate. This final rule also refines the agency's interpretation of ''vehicle type'' to more appropriately reflect the congressional and judicial considerations. Because vehicles built in two or more stages are more properly considered a ''vehicle type,'' the agency will be able more properly to consider the benefits and burdens of various compliance options when developing Federal motor vehicle standards.

DATES: Effective Date: The amendments made in this final rule are effective September 1, 2006.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Harry Thompson, Office of Vehicle Safety Compliance, NHTSA (telephone 202–366–5289).

For legal issues: Steve Wood, Office of the Chief Counsel, NHTSA (telephone (202) 366–2992).

You can reach both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The National Traffic and Motor Vehicle Safety Act, as amended and recodified, mandates the issuance of Federal motor vehicle safety standards and requires the manufacturers of motor vehicles to certify that their vehicles comply with all applicable standards. While some vehicles are manufactured in a single stage by a single manufacturer, others are manufactured in multiple stages by a series of manufacturers.

Certification problems related to vehicles built in two or more stages have troubled both the automotive industry and the National Highway Traffic Safety Administration (NHTSA) almost since the agency's creation. An early set of NHTSA regulations on this subject was overturned by the Seventh Circuit Court of Appeals thirty years ago. *Rex Chainbelt* v. *Volpe,* 486 F.2d 757 (7th Cir. 1973); appeal after remand, Rex *Chainbelt* v. *Brinegar,* 511 F.2d 1215 (7th Cir. 1975). The court's decision focused on chassis-cabs and stated that for such vehicles a ''dual certification'' was required: a partial certification by the incomplete vehicle manufacturer and a complementary partial certification by the final-stage manufacturer, resulting in a fully certified vehicle. In response, the agency amended 49 CFR 567.5, Requirements for manufacturers of vehicles manufactured in two or more stages, and part 568, Vehicles manufactured in two or more stages, to define ''chassis-cabs'' and establish special certification requirements for chassis-cab manufacturers, which are

usually large vehicle manufacturers such as General Motors Corporation (GM) and Ford Motor Company (Ford).

Pursuant to these regulations, manufacturers of chassis-cabs are required to place on the incomplete vehicle a certification label stating under what conditions the chassis-cab has been certified. This allows what is commonly referred to as ''pass-through certification.'' As long as a subsequent manufacturer meets the conditions of the chassis-cab certification, that manufacturer may rely on this certification and pass it through when certifying the completed vehicle.

However, the amended regulations did not impose corresponding certification responsibilities on manufacturers of incomplete vehicles other than chassis-cabs (*e.g.,* incomplete vans, cut-away chassis, stripped chassis and chassis-cowls).

49 CFR part 568 requires the manufacturers of all incomplete vehicles to provide with each incomplete vehicle an incomplete vehicle document (IVD). This document details, with varying degrees of specificity, the types of future manufacturing contemplated by the incomplete vehicle manufacturer and must provide, for each applicable safety standard, one of three statements that a subsequent manufacturer can rely on when certifying compliance of the vehicle, as finally manufactured, to some or all of all applicable Federal Motor Vehicle Safety Standards (FMVSS).

First, the IVD may state, with respect to a particular safety standard, that the vehicle, when completed, will conform to the standard if no alterations are made in identified components of the incomplete vehicle. This representation is most often made with respect to chassis-cabs, since a significant portion of the occupant compartment is already complete.

Second, the IVD may provide a statement for a particular standard or set of standards of specific conditions of final manufacture under which the completed vehicle will conform to the standard. This statement is applicable in those instances in which the incomplete vehicle manufacturer has provided all or a portion of the equipment needed to comply with the standard, but subsequent manufacturing might be expected to change the vehicle such that it may not comply with the standard once finally manufactured. For example, the incomplete vehicle could be equipped with a brake system that would, in many instances, enable the vehicle to comply with the applicable brake standard once the vehicle was complete, but that would not enable it to comply if the vehicle's weight or center of gravity were significantly altered.

Third, the IVD may identify those standards for which no representation of conformity is made because conformity with the standard is not substantially affected by the design of the incomplete vehicle. Thus, a manufacturer of a stripped chassis may be unable to make any representations about conformity to any crashworthiness standards if the incomplete vehicle does not contain an occupant compartment. NHTSA said in the SNPRM that when issuing the original set of regulations regarding certification of vehicles built in two or more stages, the agency indicated that it believed final-stage manufacturers would be able to rely on the representations made in the IVDs when certifying the completed vehicle's compliance with all applicable FMVSSs.

The distinction between chassis-cabs and other forms of incomplete vehicles created by the 1977 amendment of 49 CFR part 567, Certification, was based on NHTSA's belief that incomplete vehicles other than chassis-cabs may be insufficiently manufactured to justify any type of certification statement, given its legal implications, by the incomplete vehicle manufacturer. With respect to these other vehicles, NHTSA maintained its position that the incomplete vehicle manufacturer should be able to provide sufficient information in the IVD to inform the final-stage manufacturer about the extent to which it could rely on manufacturing operations of the incomplete vehicle manufacturer when determining whether additional engineering resources were needed to certify compliance with all applicable standards in good faith. *See* 42 FR 37814 (July 25, 1977).

The distinction between certification responsibilities of manufacturers of chassis-cabs and the responsibilities of manufacturers of other types of incomplete vehicles led to a successful challenge to a NHTSA regulation in the early 1990s. In 1987, NHTSA amended FMVSS No. 204, Steering column displacement, to expand the applicability of the standard from vehicles with a gross vehicle weight rating (GVWR) of 4,000 lb to vehicles with a GVWR of up to 6,500 lb. 52 FR 44893 (November 23, 1987); denial of petitions for reconsideration: 54 FR 24344 (June 7, 1989). This amendment had the effect of making the standard applicable to some types of vehicles typically manufactured in two or more stages. The National Truck and Equipment Association (NTEA) challenged those amendments as they applied to final-stage manufacturers. The Sixth Circuit concluded that the challenged rule was not practicable for final-stage manufacturers that cannot ''pass-through'' the certification of the incomplete vehicle manufacturer. *National Truck and Equipment Ass'n* v. *NHTSA,* 919 F.2d 1148 (6th Cir. 1990). The court cited NHTSA's acknowledgement in the preamble to the final rule that most final-stage manufacturers are not capable of performing dynamic crash testing or in-house engineering analysis, as well as the fact that ''pass-through'' certification was not available under the existing regulations unless the incomplete vehicle were a chassis-cab. While the court's decision was technically limited to FMVSS No. 204, NHTSA recognized that the court's decision would likely be deemed equally applicable to other safety standards for which the cost of certification was high.[1]

II. Notice of Proposed Rulemaking

In response to the NTEA decision, on December 3, 1991, NHTSA published a *notice of proposed rulemaking (NPRM) (56 FR 61392)* to extend the certification requirements that currently apply only to manufacturers of chassis-cabs to all incomplete vehicle manufacturers, and to permit all final-stage manufacturers to ''pass through'' the certification of the incomplete vehicle under certain circumstances. That NPRM engendered considerable controversy and virtually no support. In the comments, there was a clear division in positions among the various segments of the multi-stage vehicle industry.

On November 17, 1995, NHTSA published a Notice announcing that it would hold a public meeting to seek information from final-stage and intermediate manufacturers of vehicles built in two or more stages, manufacturers of incomplete vehicles, and the public on certification of vehicles that are manufactured in stages and suggestions for action with respect to NHTSA's regulations and FMVSSs that govern the manufacture of vehicles in stages (60 FR 57694). In the notice, the agency stated its belief that multi-stage vehicle certification is an area in which negotiated rulemaking may be

[1] Of particular concern to final-stage vehicle manufacturers is the cost of certifying to the dynamic crash test requirements of some of the safety standards. Under these standards, NHTSA conducts compliance testing by crashing a vehicle. While NHTSA has always maintained that a manufacturer need not actually crash the vehicle in order to certify compliance, it generally has not specified alternative certification methods in the standards.

beneficial, and invited comments on the advisability of conducting negotiated rulemaking in this area.

The public meeting was held on December 12, 1995. Companies, trade associations, and individuals made presentations at the meeting and/or submitted written comments for the record. Many of the comments endorsed using regulatory negotiation for this rulemaking; none opposed the process. Based on this response, NHTSA determined that establishing an *ad hoc* advisory committee on this subject is in the public interest.

III. Negotiated Rulemaking Process

In May 1999, NHTSA published a notice of intent to convene a negotiated rulemaking committee, and sought the names of interested participants (64 FR 27499; May 20, 1999). The chartered Committee originally consisted of two facilitators and 23 individuals, many, but not all of whom remained active in the negotiations throughout the negotiated rulemaking process. The Committee was comprised of representatives from:

(1) *Incomplete vehicle manufacturers* (General Motors (GM), Ford, Motor Coach Industries (MCI), DaimlerChrysler, International Truck and Engine Corp. (International), Freightliner, and Workhorse Custom Chassis (Workhorse));

(2) *Component manufacturers* (Atwood Mobile Products (Atwood) and Bornemann Products (Bornemann));

(3) *Final-stage manufacturers and alterers* (National Truck Equipment Association (NTEA), National Mobility Equipment Dealers Association (NMEDA), Mark III Industries (Mark III), Environmental Industries Associations (EIA), Recreation Vehicle Industry Association (RVIA), Blue Bird Body Co. (Blue Bird), National Automobile Dealers Association (NADA), and an individual representing the Ambulance Manufacturers Division and Manufacturers Council of Small School Buses, Mid-Size Bus Manufacturers Association (AMD));

(4) *End users of the vehicle* (American Automobile Association (AAA), Paralyzed Veterans of America (PVA), National Association of Fleet Administrators (NAFA), and the Center for Auto Safety (CFAS));

(5) *Vehicle testing facilities* (TRC Corp.), and

(6) NHTSA.[2]

Several other parties representing these groups were also contacted, particularly those who could represent the end user of the vehicle. The Insurance Institute for Highway Safety (IIHS) and Consumers Union declined to participate. Public Citizen initially expressed an interest in participating, but decided against doing so when it discovered that CFAS would be involved. The Teamsters Union, which represents many of the drivers of the commercial motor vehicles manufactured in two or more stages, also declined the agency's invitation to participate. While listed as a Committee member, AAA did not attend any meetings. The PVA attended only the December 1999 public meeting, and Mark III stopped participating when the company went out of business.[3]

In December 1999, NHTSA held a public meeting during which it broadly discussed the substantive issues that would be the subject of, and the ground rules that would apply to, the negotiated rulemaking process. Subsequent public meetings were held in February and March 2000, and the meeting of the chartered Committee commenced in May 2000. In the earlier meetings, the Committee members covered the ground rules associated with a negotiated rulemaking, discussed the history leading up to the formation of the Committee and stated their position vis-à-vis the desired outcome. The subsequent meetings addressed several issues, including the likelihood of vehicles built in two or more stages being involved in motor vehicle crashes, the potential for legal liability when subsequent manufacturers complete manufacturing operations outside of the IVD or pass-through certification, and the perceived and actual needs of end consumers to have certain features on their vehicles.

Another meeting was held in October 2000, during which all issues save two were largely resolved.[4] First, International and Freightliner, who were not at the October 2000 meeting,[5] expressed concerns in writing about incomplete vehicle manufacturers' taking legal responsibility for incomplete vehicles through representations made in the IVD. Since these companies offered no solution addressing their concerns, instead positing that there was no need to change the existing regulatory scheme, the issue was tabled until the next meeting. The other remaining issue, concerning the possible exclusion of final-stage manufacturers from the need to comply with certain safety standards in cases in which the manufacturer's production of the vehicle in question is limited, had been the most contentious issue at each of the previous meetings. This issue largely impacted four members of the committee, NHTSA, NTEA, AMD, and RVIA. Given the limited impact on the Committee as a whole, as well as the potential for the issue to prevent any consensus on changes to parts 567 and 568, the Committee agreed to hold no more meetings unless the four interested parties were able to come to an agreement on how to address potential exemptions.

After meetings between the NTEA, AMD and NHTSA, at which the NTEA represented RVIA's interests, a final Committee meeting was held in February 2002. The Committee representative for GM facilitated this final meeting. Not all members of the Committee were able to attend the final meeting, although a broad-based representation was available.

At the beginning of the meeting, two outstanding issues remained: (1) The scope of certification representations made by incomplete vehicle manufacturers, and (2) a mechanism for assuring a timely recall in the event that the various manufacturers could not agree which one was responsible for a given noncompliance or safety defect.[6] At the conclusion of the meeting, there remained objections from several of the incomplete vehicle manufacturers over the possible acceptance of legal responsibility for unanticipated manufacturing operations by subsequent manufacturers.

NHTSA agreed to draft the Committee report for circulation among those

[2] While not a member of the Committee, Transport Canada attended several of the Committee meetings and provided valuable input. This informal participation by Transport Canada has helped both Canada and the United States develop regulations that will be closely harmonized should the proposed language be adopted by NHTSA. Indeed, the Canadian regulation is already in effect, although the proposed rule developed by the committee contains additional detail.

[3] NHTSA has the authority to decide whether the participation of these three parties was critical to balance or representation of all affected interests on the Committee. The interests represented by AAA and PVA were also represented by the CFAS and NAFA. Likewise, the interests of final-stage manufacturers were represented by several parties other than Mark III, including associations (NMEDA, RVIA, and NTEA) and an individual company (Blue Bird Body Company). Finally, while Mark III was actively involved in the negotiations prior to ceasing business operations, AAA and PVA played no active role in the process with PVA attending only the first, introductory meeting, and AAA attending none of the meetings. Accordingly, NHTSA has determined that the participation of these three parties was not critical to the negotiated rulemaking process.

[4] The minutes of these meetings are in the docket.

[5] While the October 2000 meeting had been scheduled for some time prior to it taking place, final confirmation of the meeting by the mediator occurred only a few days prior. Accordingly, some Committee members, including International and Freightliner, were unable to attend.

[6] The mechanism to ensure a timely recall was discussed and generally agreed upon by the Committee on the second day of the meeting. Some Committee members left the meeting early because of travel arrangements. These individuals, as well as those Committee members who did not attend the meeting, did not have an opportunity to discuss this provision.

Committee members still involved in the process. All Committee members had an opportunity to review and comment on the Committee report. Atwood, Bornemann, Blue Bird, and Workhorse concurred with the report without further comment. NADA, GM, NTEA, AMD and RVIA offered extensive revisions, but generally concurred with the report's content, while TRC, NAFA, CFAS, EIA, and MCI did not comment on the draft report. NMEDA's comments were limited to concerns about the exclusion of vehicle modifiers from the proposed generic leadtime, the potential for allocation of recall responsibility to vehicle equipment manufacturers, and the applicability of new temporary exemption procedures to dynamic crash test conditions. Ford, Freightliner, International, and DaimlerChrysler objected to the provision that NHTSA could allocate initial recall responsibility when the various involved manufacturers could not agree which was the responsible party. International disagreed with the provisions that would allocate legal responsibility among each manufacturer in the manufacturing process, stating it could not be responsible for further manufacturing operations outside of its control. It suggested a revision to the draft regulation that would prevent subsequent stage manufacturers from relying on any incomplete vehicle manufacturer's representation if the subsequent stage manufacturer modified or added originally supplied components or systems in such a manner as to affect certification or the validity of stated weight ratings.

Given the lack of consensus among the Committee members, NHTSA decided to move forward with the publication of a Supplemental Notice of Proposed Rulemaking (SNPRM) on which all Committee members were free to offer unrestricted comments. In the SNPRM, NHTSA recognized that various Committee members compromised their initial positions as part of the negotiation process. Given the lack of consensus on all aspects of the draft regulation developed by the Committee, NHTSA believed it would have been unfair to restrict comment on any portions of the proposal. Nevertheless, NHTSA believed that the draft regulation represented a significant improvement over the existing regulations governing the certification of vehicles built in two or more stages. Additionally, the agency recognized that the negotiated rulemaking process afforded all participants a unique opportunity to fully evaluate proposed changes to the existing regulations, as well as possible alternative approaches. NHTSA believes the negotiated rulemaking process has been valuable in drafting amendments that balance the practical needs of all parties represented by the Committee. Accordingly, NHTSA decided to propose amending the applicable regulations as drafted by the Committee.

IV. Supplemental Notice of Proposed Rulemaking

On June 28, 2004, NHTSA published a SNPRM (69 FR 36038) proposing to amend five different parts of title 49 to establish a comprehensive regulatory scheme for addressing certification issues related to vehicles built in two or more stages and, to a lesser degree, to altered vehicles. In the SNPRM, NHTSA provided background on certification issues, discussed the negotiated rulemaking process and summarized the primary issues involved in the rulemaking, noting a lack of consensus among members of the negotiated rulemaking Committee. NHTSA proposed amendments to the applicable regulations as drafted by the Committee but invited comments from Committee members and the public regarding the proposed changes.

A. Proposed Revisions to 49 CFR Part 555

In the SNPRM, NHTSA proposed establishing a new subpart in 49 CFR part 555, Temporary Exemption From Motor Vehicle Safety and Bumper Standards, that would be limited to final-stage manufacturers and alterers. The proposed new subpart would apply to final-stage manufacturers and alterers who need a temporary exemption from a portion of a safety standard (or set of safety standards) for which the agency verifies compliance solely through dynamic crash testing. The new subpart would streamline the temporary exemption process by allowing an association or other party representing the interests of multiple manufacturers to bundle exemption petitions for a specific vehicle design, thus permitting a single explanation of the potential safety impact and good faith attempts to comply with the standards.

Under the proposed subpart, each manufacturer seeking an exemption would be required to demonstrate financial hardship and certify that it has been unable to manufacture a compliant vehicle. Exemptions based on financial hardship under the proposed rule could not be granted to companies manufacturing more than 10,000 vehicles per year, and any exemption could not apply to more than 2,500 vehicles per year.[7] Additionally, under the proposed subpart, NHTSA would commit to informing an applicant within 30 days whether the application is complete and would attempt to grant or deny the petition within 120 days of its acknowledgement that the application is complete.

As discussed in the SNPRM, although NHTSA considered a negotiated rulemaking subcommittee suggestion to exclude certain intermediate and final-stage manufacturers completely from standards based on dynamic crash tests, NHTSA stated that it believed that limitations set forth in 49 U.S.C. 30113 and the court's ruling in *Nader* v. *Volpe,* 320 F.Supp. 266 (D.D.C. 1970), aff'd, 475 F.2d 216 (D.C. Cir. 1973), preclude the agency from doing so. Accordingly, NHTSA instead proposed changes to 49 CFR Part 555 to permit temporary exemptions in an effort to ease the financial burdens on final-stage manufacturers for standards based on the performance of a vehicle in a dynamic crash test.

B. Proposed Revisions to 49 CFR Part 567

NHTSA proposed expanding 49 CFR part 567, Certification, for all vehicles. The proposal would revise significantly the section dealing with certification of vehicles built in two or more stages, 49 CFR 567.5. It was intended to extend pass-through certification beyond chassis-cabs now in § 567.5(a) to all incomplete vehicles. The proposal also stated that incomplete vehicle manufacturers assume legal responsibility for all duties and liabilities imposed by the Act with respect to components and systems they install on the incomplete vehicle and, to the extent that the vehicle is completed in accordance with the IVD, for all components and systems added by the final-stage manufacturer, except for defects in those components and systems or defects in workmanship by the final-stage manufacturer.

Under the proposed regulation, manufacturers of incomplete vehicles would be required to place an information label on the vehicle (or ship a label with the IVD if it cannot be placed on the vehicle) that identifies the incomplete vehicle manufacturer, month and year of manufacture, and GVWR/GAWR limitations of the incomplete vehicle and provides the vehicle identification number (VIN) of the vehicle. Likewise, an intermediate stage manufacturer would be required to place an information label on the incomplete vehicle that identifies the

[7] 49 U.S.C. 30113(d).

intermediate stage manufacturer, month and year the intermediate manufacturer last performed work on the vehicle, and GVWR/GAWR limitations, if different from those provided by the incomplete vehicle manufacturer. The final-stage manufacturer would be required to place a certification label on the vehicle that specifies that the vehicle conforms to all applicable standards, and may also specify that it has or has not, for FMVSSs listed, stayed within the confines of the incomplete vehicle manufacturer's instructions or simply makes a statement of conformity. In addition, notwithstanding the certification, this section of the proposed regulation would assign legal responsibility for each stage of vehicle manufacture with respect to systems and components supplied on the vehicle, work performed on the vehicle, and the accuracy of the information contained in the IVD and addenda to the IVD. The SNPRM inadvertently deleted from part 567 the definition of chassis-cab, found in existing § 567.3, and requirements for persons who do not alter certified vehicles or do so with readily attachable components, found in existing § 567.6.

C. Proposed Revisions to 49 CFR Part 568

In the SNPRM, NHTSA proposed revising 49 CFR part 568, Vehicles Manufactured in Two or More Stages, to note expressly that an incomplete vehicle manufacturer may incorporate by reference body builder or other design and engineering guidance into the IVD. The agency noted its expectation that design and engineering guides, if included, would generally provide instructions on certain aspects of further manufacturing, which would assist multi-stage manufacturers to pass through the compliance statements from incomplete vehicle manufacturers. NHTSA indicated that the incorporation of design and engineering guides should not unreasonably limit the circumstances in which it will be possible to pass through these compliance statements. Further, the agency stated that these guides would provide more detailed design constraints than an IVD, reducing the likelihood that a subsequent stage manufacturer could successfully claim that it was unaware that a particular modification would invalidate the previous manufacturer's compliance statement.

D. Proposed Revisions to 49 CFR Part 571

NHTSA also requested comments on its proposed revisions to 49 CFR 571.8, Effective Date, providing intermediate and final-stage manufacturers and alterers an automatic additional year for compliance with certain amendments to the FMVSSs. Under the proposal, the additional leadtime would apply unless NHTSA decides that such leadtime is inappropriate as part of a rulemaking amending or establishing a safety standard. The proposed change also would allow NHTSA to provide even more additional leadtime upon a determination that one-year is insufficient. The agency additionally could determine that the safety problem is so significant that providing additional leadtime would result in an unacceptable risk of injury or death. Further, Congress could direct NHTSA to require compliance with a new standard by a specified date. In those instances in which Congress limits the agency's discretion to provide additional leadtime, all manufacturers and alterers would be required to meet the compliance date set forth in the standard.

NHTSA noted in the SNPRM that incomplete vehicle manufacturers often do not provide final-stage manufacturers with information necessary to certify their vehicles until shortly before, and in some cases even after, the effective date of the standard in question. The same problem arises when an incomplete vehicle is substantively changed as the result of a model year changeover. The agency stated that giving alterers an additional year allows alterers to take certified vehicles out of compliance, an action typically viewed with disfavor by NHTSA. However, the problems faced by final-stage manufacturers also are applicable to alterers. If a vehicle manufacturer waits until the last possible moment to certify vehicles, alterers will not have the ability to conduct any engineering analysis to determine if the alterations affect compliance.

Under the proposed changes, for phased-in requirements, the additional year would be applied at the end of the phase-in. NHTSA stated that this leadtime is appropriate because incomplete vehicle manufacturers often complete their certification testing just before start of production for a new model year. In the case of new requirements that are phased-in, the incomplete manufacturer may wait until the end of the phase-in to conduct certification testing or analysis for incomplete vehicles. This is because, for many manufacturers, the incomplete vehicle fleet is only a small proportion of its overall production.

With respect to vehicle modifiers, NHTSA recognized in the SNPRM the National Mobility Equipment Dealers Association's concern that vehicle modifiers, *i.e.,* businesses that modify vehicles after first sale other than for resale, face the same problems as vehicle alterers. However, NHTSA noted that because vehicle modifiers bear no certification responsibility, a change to provide modifiers with an additional year to make modifications would not be made in the context of amending part 571. Further, NHTSA said that it believed that the businesses engaging in operations that may invalidate compliance certification should be held responsible for their actions. The agency acknowledged its awareness of instances in which vehicle alterers have attempted to avoid certification responsibility by waiting until a customer has taken possession of a vehicle to make changes that would take the vehicle out of compliance with one or more safety standards. The SNPRM noted that while a vehicle modifier that knowingly makes an item of mandatory safety equipment inoperative may be subject to fines, it could not be compelled to conduct a recall campaign to remedy any safety-related defects or noncompliances resulting from its work.

E. Proposed Revisions to 49 CFR Part 573

NHTSA also proposed revisions to 49 CFR part 573. Under existing regulations, the manufacturer of a motor vehicle is responsible for any safety-related defect or noncompliance determined to exist in the vehicle or in any item of original equipment. 49 CFR 573.5; 49 CFR 579 (prior to 2002); *see* 49 U.S.C. 30102(b)(1)(F) and (G). In the case of multi-stage vehicles, ultimate responsibility has rested with the final-stage manufacturer because, in part, incomplete vehicles are classified as original equipment items. 58 FR 40402, 40403 (July 28, 1993). Nonetheless, NHTSA's regulations provide that in the case of a defect in vehicles manufactured in two or more stages, compliance with specified recall requirements by either the manufacturer of the incomplete vehicle or any subsequent manufacturer shall be considered compliance by all manufacturers. 49 CFR 573.3(c).

In the course of this rulemaking, final-stage manufacturers have sought to shift ultimate responsibility under the rule for some recalls to incomplete vehicle manufacturers. In cases where the final-stage manufacturer and the incomplete vehicle manufacturer agree on recall responsibility, the matter is essentially straightforward. In cases where the final-stage manufacturer and the

incomplete vehicle manufacturer do not agree on recall responsibility, this raises the question of how this responsibility is to be assigned. As noted in the SNPRM, an associated issue was the mechanism for assuring a timely recall in the event the various manufacturers could not agree who was responsible. 69 FR 36041. From a safety perspective, timeliness and finality were very important in light of the obvious problem of the existence of a safety-related defect or noncompliance not addressed by a recall because manufacturers were squabbling over responsibility.

In the SNPRM, NHTSA presented its proposed changes to section 573.5, addressing those instances in which either the manufacturers or NHTSA determine that the vehicle or its original equipment has a safety-related defect or noncompliance but the parties dispute their accountability for the recall. In such an instance, under the proposed rule, NHTSA would assign recall responsibility to the party it believes is in the best position to conduct and notification and remedy campaign. Proposed § 573.5(c), 69 FR 36056. Although the agency expected that there should be very few instances in which a dispute arises regarding which manufacturer should conduct a recall campaign, NHTSA indicated it is critical that any campaign not be delayed while the various manufacturers attempt to assess liability. NHTSA's determination would be limited to recall responsibilities and would not serve to impose fault or ultimate responsibility for the economic burden on the party ordered to conduct the recall.

As discussed above, currently, the final-stage manufacturer has the ultimate responsibility. Thus, there is not any need for the agency to assign responsibility. This approach avoids delays in removing unsafe vehicles from the road. Within this structure, the manufacturers work out issues of responsibility.

In the SNPRM, NHTSA further proposed that its determination would not be reviewable. § 573.5(c). NHTSA acknowledged its concerns whether the nonreviewability provision could withstand judicial scrutiny. NHTSA noted that courts favor review of final agency actions. In the SNPRM, NHTSA indicated its belief that the nonreviewability provision would only withstand judicial review if a court determined that NHTSA's decision as to who must conduct the recall is not a final agency action under the Administrative Procedure Act (APA). Accordingly, given its concerns about the likelihood that the nonreviewability provision could withstand judicial scrutiny, NHTSA invited commenters to provide arguments and analyses regarding which manufacturer should be deemed responsible for a recall campaign in the event that NHTSA and the various-stage vehicle manufacturers could not determine in a timely manner which party should bear responsibility for the recall.

In addition, NHTSA reprinted in the preamble to the SNPRM the alternative language offered in the negotiated rulemaking by DaimlerChrysler, which would repeat the specific allocation of legal responsibility among incomplete vehicle, intermediate, and final-stage manufacturers found in proposed section 567.5. However, NHTSA noted that DaimlerChrysler's language would not provide a dispute resolution mechanism and would not ensure that a recall campaign is conducted in a timely manner in the event of a dispute.

V. Summary of Public Comments to the SNPRM

NHTSA received nine comments in response to the SNPRM. Five incomplete vehicle manufacturers (GM, DaimlerChrysler, Ford, International, Freightliner), one association representing incomplete truck manufacturers (Truck Manufacturers Association (TMA)), and three associations representing the final-stage manufacturer or alterer industry (RVIA, NTEA, NADA) submitted comments. Although International, Ford and RVIA submitted comments after the deadline for comments passed, NHTSA considered the late comments in writing this Final Rule.

The commenters responding to the proposal in part 555 for financial hardship temporary exemptions for alterers and final-stage manufacturers generally favored the adoption of the exemptions. However, the associations representing the final-stage manufacturer or alterer industry portrayed temporary exemptions as only a partial solution to the problems such manufacturers face with respect to certification through dynamic crash testing and requested that NHTSA provide safe harbors for low-production vehicles.

In general, commenters supported changes to part 567 to eliminate the current distinction between chassis-cabs and other incomplete vehicles and conveyed overall support for the proposal allocating legal responsibility for each stage of vehicle manufacture. Some commenters representing incomplete vehicle manufacturers suggested modifications to the language proposed in section 567.5(b) to clarify the intent or to ensure that incomplete vehicle manufacturers are not assigned legal responsibility for things over which they have no control.

With respect to the proposed revisions to part 568 to permit incomplete vehicle manufacturers to incorporate by reference body builder or other design and engineering guidance into the IVD, those who commented either generally supported or did not oppose the proposal. Two of the final-stage manufacturer representatives expressed concerns that the incorporation of additional documents could create further burdens for final-stage manufacturers.

In general, commenters favored the automatic one-year extension proposed for part 571. However, some of the commenters representing final-stage manufacturers suggested that the rule include an additional year of leadtime for final-stage manufacturers under certain circumstances associated with the introduction of new model year vehicles.

Finally, among the most contentious proposals for which NHTSA received comments were the proposed revisions to part 573 to allow NHTSA to determine which manufacturer is in the best position to conduct a recall when the parties dispute their accountability for a safety-related defect or noncompliance and whether such a determination could be nonreviewable. The incomplete vehicle manufacturers expressed disapproval of the proposed revisions to part 573, while the commenters representing final-stage manufacturers articulated support for the proposal.

VI. Agency Response to Comments

The comments received regarding the changes proposed in the SNPRM to the five different parts of title 49 are summarized in more detail below. The agency's responses to these comments also are discussed below.

A. 49 CFR Part 555

1. Summary of Comments on Proposed Revisions to 49 CFR Part 555

The five commenters who submitted comments on the proposed changes to part 555 (GM, Ford, NADA, RVIA, NTEA) expressed general support for the financial hardship temporary exemption for alterers, intermediate, and final-stage manufacturers.

GM commented that the proposed revisions would provide a better means for temporary exemptions than the mechanism found in the current regulatory text. Ford pointed to an

inconsistency between the statement in the preamble of the proposed rule that the exemption would only apply to safety requirements with which NHTSA verifies compliance through dynamic crash testing, while the proposed text of section 555.12 permits ''a temporary exemption from the provisions of *any portion* of a Federal Motor Vehicle Safety Standard.'' (Emphasis added.) Ford stated that NHTSA should limit the temporary exemptions to requirements that are based on dynamic crash testing. Additionally, Ford indicated its disapproval of NHTSA's proposal that manufacturers would not have to commit to achieving full compliance by the expiration of the exemption, commenting that the rule should excuse compliance in instances of ''legitimate hardship'' but should not completely excuse compliance. Ford added that where compliance is impractical because of the design of a special purpose vehicle, the text of the promulgated rule should handle the exclusion specifically.

Although NADA expressed support for the temporary exemptions as proposed, it noted ''the proposed exemption process is by no means a panacea and may prove unwieldy in certain circumstances.''

RVIA generally supported the amendments to part 555, but requested clarification regarding the limitations in § 555.11 that the temporary exemption apply only to entities that produce or alter no more than 10,000 vehicles per year and cannot apply to more than 2,500 vehicles sold in the United States in any twelve-month period. In particular, RVIA suggested clarifying language to specify that, when determining eligibility for a temporary exemption, only vehicles built in two or more stages should be counted in the aggregate limit of 10,000 vehicles per year. RVIA wanted to ensure that an RV manufacturer's non-applicable single stage towable vehicles would not be counted in the aggregate limit of 10,000 vehicles per year when determining eligibility for a temporary exclusion. Despite generally supporting the proposed amendments to part 555, RVIA additionally commented that the amendments provide an ''imperfect system of temporary exemptions.'' Accordingly, RVIA encouraged NHTSA to consider regulatory and legislative alternatives to expand its exemption and exemption renewal authority, including the authority to grant safe harbor exemptions for low-production vehicles.

NTEA provided comments regarding the proposal for a financial hardship temporary exemption for alterers and final-stage manufacturers. As evidenced in its comments responding to the SNPRM, NTEA prefers either consortium testing as an alternate means of demonstrating compliance with dynamic standards or a ''safe harbor'' for intermediate and final-stage manufacturers under certain circumstances. NTEA noted that the negotiated rulemaking committee did not embrace NTEA's suggestion for consortium testing. A negotiated rulemaking subcommittee suggested a safe harbor, but NHTSA rejected the suggestion in the SNPRM, on the basis that it would be an impermissible exemption under 49 U.S.C. 30113 and the ruling in *Nader.* NTEA argued in its comments, however, that neither section 30113 nor the *Nader* decision prevents NHTSA from requiring dynamic crash testing only for vehicles for which demonstrating compliance is practicable. NTEA recommended that if NHTSA believes it does not have statutory authority to implement the subcommittee's suggestion, NHTSA should seek the necessary statutory authority in order to adequately address final-stage manufacturers' compliance problems.

Nonetheless, NTEA expressed support for the proposed temporary exemption provision, but commented that the temporary exemption would be only a partial solution to the problem of verification through dynamic crash testing because relief would be limited. NTEA asserted that under the temporary exemption provisions of part 555, petitions would be required for each model produced, each final-stage manufacturer would need to submit individual filings for each petition, and new petitions would be required when customers ask final-stage manufacturers to produce slight variations of the vehicle combinations. Accordingly, NTEA commented that NHTSA would not be able to respond promptly to this vast number of petitions. NTEA additionally commented that inconsistent with the court's ruling in *NTEA,* ''[a]n uncertain, awkward and time consuming petition process, with an uncertain outcome on the merits, is not an adequate substitute to a legitimate compliance alternative.'' NTEA recommended that NHTSA seek statutory authority to expand temporary exemptions to a wider class of manufacturers.

2. Agency Response to Comments on Proposed Revisions to 49 CFR Part 555

a. Authority To Exclude Multi-Stage Vehicles From FMVSSs

In response to the public comments arguing that we possess authority to exclude multi-stage vehicles as a group from a standard, we decided to re-examine our position on that issue. The discussion in the SNPRM of our authority appears to have conflated our authority to exclude types of vehicles permanently from the application of a standard with our authority to exempt individual manufacturers temporarily from a standard.

Multi-stage vehicles are aimed at a variety of niche markets, most of which are too small to be serviced economically by single stage manufacturers. Some multi-stage vehicles are built from chassis-cabs completed with an intact occupant compartment. Others are built from less complete vehicles and designed to service particular needs—often necessitating the addition by the final-stage manufacturer of its own occupant compartment. The agency must balance accommodating this segment of the motor vehicle market with the requirements of the Vehicle Safety Act.

The courts have set forth a number of principles the agency must take into account when considering these issues. First, the mandate in the Vehicle Safety Act that the agency consider whether a proposed standard is appropriate for the particular type of motor vehicle for which it is prescribed is intended to ensure that consumers are provided an array of purchasing choices and to preclude some standards that will effectively eliminate certain types of vehicles from the market. *See Chrysler Corp.* v. *Dept. of Transportation,* 472 F.2d 659, 679 (6th Cir. 1972) (agency may not establish a standard that effectively eliminates convertibles and sports cars from the market). Second, the agency may not provide exemptions for single manufacturers beyond those specified by statute. *See Nader* v. *Volpe,* 320 F. Supp. 266 (D.D.C. 1970), motion to vacate affirmance denied, 475 F.2d 916 (DC Cir. 1973). Finally, the agency must provide adequate compliance provisions for final-stage manufacturers. Failing to provide these manufacturers with a means of establishing compliance would render a standard impracticable as to them. *See National Truck Equipment Ass'n* v. *National Highway Traffic Safety Administration,* 919 F.2d 1148 (6th Cir. 1990) (''NTEA'').

One of the traditional ways in which the agency has handled the difficulties of these multi-stage vehicles has been

simply to exclude all vehicles, single-stage as well as multi-stage, within the upper GVWR range of light vehicles, typically 8,500 lb. GVWR–10,000 lb. GVWR. Many of the multi-stage vehicles manufactured for commercial use cluster in that GVWR range.[8]

The agency traditionally took this approach because the agency historically was of the view that it could not subject vehicles built in multiple stages to any different requirements than those built in a single stage. That was because the agency had construed section 30111(b)(3) of the Safety Act, which instructs the agency to ''consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle * * * for which it is prescribed,'' as precluding such an approach.

In reaching that conclusion, the agency had focused on a comment in the Senate Report:

> In determining whether any proposed standard is ''appropriate'' for the particular type of motor-vehicle * * * for which it is prescribed, the committee intends that the Secretary will consider the desirability of affording consumers continued wide range of choices in the selection of motor vehicles. Thus it is not intended that standards will be set which will eliminate or necessarily be the same for small cars or such widely accepted models as convertibles and sports cars, so long as all motor vehicles meet basic minimum standards. Such differences, of course, would be based on the type of vehicle rather than its place of origin or any special circumstances of its manufacturer.

Focusing on the last sentence of that passage, the agency construed multi-stage vehicles with regard to the ''special circumstances of [their] manufacturer,'' *See* 60 FR 38749, 38758, July 28, 1995, rather than considering whether multi-stage vehicles constitute a ''type of vehicle.'' *See NTEA* (at 1151) (Noting the agency's regulation defining ''incomplete vehicle'' as ''an assemblage consisting as a minimum, of frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be part of the completed vehicle that requires further manufacturing operations * * * to become a completed vehicle.'' 49 CFR 568.3 (1989)).

We have considered our historical view of the legislative history in light of relevant case law and our experience with the compliance difficulties imposed on final-stage manufacturers. We note that the language we had previously considered to be a limitation does not appear in the statutory text. Nothing in the statutory text implies that Congress intended that incomplete vehicles not be deemed a vehicle type subject to special consideration during the regulatory process. We believe the sentence found in the Senate Report was intended to avoid regulatory distinctions based on manufacturer-specific criteria (such as place of production or manner of importation). This is consistent with the Court's conclusion in *Nader* v. *Volpe, supra,* that the agency cannot give exemptions to particular manufacturers beyond that provided by the statute.

We are also concerned that we had overlooked the existence of relevant physical attributes of multi-stage vehicles. Many of the multi-stage vehicles in question have distinct physical features related to their end use. More important, all of them incorporate incomplete vehicles other than chassis-cabs. Especially in the context of the difficulties of serving niche markets, the physical limitations of the incomplete vehicles other than chassis-cabs can adversely affect the ability of multi-stage manufacturer to design safety performance into their completed vehicles.

Further, as previously applied, our interpretation limits our ability to secure increases in safety. Excluding all vehicles within a given GVWR range from a safety requirement because of the possible compliance difficulties of some of those vehicles means not obtaining the safety benefits of that requirement for any of those vehicles. Likewise, applying a lesser requirement to all of those vehicles instead of a higher requirement for some of the vehicles and a lower requirement for the balance of the vehicles also entails a loss of safety benefits.

It would be perverse to conclude that the Vehicle Safety Act permits us to exclude all vehicles within a certain GVWR range primarily because of the compliance difficulties of multi-stage vehicles within that range, but not to limit the exclusion to only the multi-stage vehicles within that range. This would enable consumers to obtain the safety benefits of regulating the other vehicles within that weight range.

Accordingly, we have refined our views to conclude that it is appropriate to consider incomplete vehicles, other than those incorporating chassis-cabs, as a vehicle type subject to consideration in the establishment of regulation. We anticipate that final-stage manufacturers using chassis-cabs to produce multi-stage vehicles would be in position to take advantage of ''pass-through certification'' of chassis-cabs, and therefore are not including such vehicles in the category of those for which this optional compliance method is available.

b. Suggestion That Exemptions Be Premised on Commitment to Achieving Full Compliance

NHTSA agrees with Ford that vehicle configurations for which compliance with a standard is impracticable or unnecessary should be excluded from that standard. However, given the myriad configurations of vehicles, it may not always be possible to identify and list all of those vehicles to be excluded from the standard. Moreover, some FMVSSs with dynamic crash test requirements have been amended and multi-stage and altered vehicle will be required to comply at a future date. It may not be economically practicable for a final-stage manufacturer to test very low volume or one-of-a-kind vehicle configurations. In those instances in which there is no pass-through certification in the IVD, final-stage manufacturers need a process that enables them to produce and sell such vehicles without having to commit to meeting the FMVSS at the end of the three-year exemption period.

c. Scope of New Exemption Provisions

Ford is correct that we inadvertently omitted language limiting the new exemption provision to FMVSS requirements that are based on dynamic crash testing. We have added appropriate limiting language to part 555.

d. Production Volume Limit on Eligibility for Exemption

The Vehicle Safety Act limits eligibility for financial hardship to companies manufacturing more than 10,000 motor vehicles per year.[9] As we interpret this to include all vehicles of any type, we cannot exclude single stage towable vehicles from the calculation. Section 571.3 of title 49 CFR defines ''trailer'' as a type of motor vehicle.

e. Anticipated Volume of Applications for New Exemptions

We believe that as a result of our conclusion that multi-stage vehicles

[8] As the Court noted in NTEA (at 1158): ''The Administration could meet the needs of final-stage manufacturers in many ways. It could exempt from the steering column displacement standard all commercial vehicles or all vehicles finished by final-stage manufacturers. It could exempt those vehicles for which a final-stage manufacturer cannot pass through the certification from the incomplete vehicle manufacturers. It could change the pass-through regulations. It could reexamine the issue and prove that final-stage manufacturers can conduct engineering studies, and then provide in the regulation that such studies exceed the capacities of final-stage manufacturers.''

[9] 49 U.S.C. 30113(d).

constitute a vehicle type and can be excluded, if appropriate, from particular FMVSSs, the volume of petitions will be less than anticipated at the time of the SNPRM. Moreover, the number of such petitions can be reduced if manufacturers and associations submit them for ranges of vehicle configurations, as permitted in § 555.12(e).

f. Handling of New Exemption Applications

We do not agree with NTEA's characterization of how petitions would be handled under the new petition process. Further, by potentially reducing the volume of petitions, the new interpretation of authority to exclude multi-stage vehicles from FMVSSs makes those characterizations even less appropriate.

B. 49 CFR Part 567

1. Summary of Comments on Proposed Revisions to 49 CFR Part 567

Commenters generally favored some of the proposed changes to part 567. In particular, commenters supported the elimination of the distinction between chassis-cabs and other incomplete vehicles. Some commenters favored the proposal to assign legal responsibility for each stage of vehicle manufacture with respect to systems and components supplied on the vehicle, work performed, and the accuracy of the information contained in the IVD and addendums to the IVD. However, several commenters recommended revisions to the language proposed in the SNPRM for part 567.

DaimlerChrysler, which, as discussed above, had proposed revisions to part 573, stated that the proposed § 567.5 refers only to defects and not to noncompliances, and accordingly recommended that the agency revise proposed §§ 567.5(c) and (d) to clarify that intermediate and final-stage manufacturers are responsible for noncompliances in components or systems added by them, or noncompliance resulting from work done by them.

NADA urged NHTSA to provide additional language in the preamble of the final rule to clarify the changes to § 567.6 and related definitions. NADA specifically indicated that the proposed definition of ''readily attachable component'' could create confusion in light of the agency's history of interpreting what constitutes vehicle alteration.

With respect to requirements proposed in § 567.5(b) for incomplete vehicle manufacturers, TMA offered the following alternative language to § 567.5(b)(1)(ii) and (iii) to make the intent of the section more clear:

> (ii) Components and systems that are incorporated into the completed vehicle by an intermediate or final-stage manufacturer in accordance with the instructions contained in the IVD, except for defects in those components or systems or defects in workmanship by the intermediate or final-stage manufacturer; and
>
> (iii) The accuracy of the information contained in the IVD.

International and Freightliner also commented on § 567.5(b), requesting that NHTSA delete proposed § 567.5(b)(1)(ii). International and Freightliner expressed concerns about incomplete manufacturers' certification responsibilities under that proposed section. As they noted, the proposal suggests that the incomplete manufacturer has legal responsibility for something that it has no control over. The comments explained that incomplete manufacturers cannot enumerate or prohibit every conceivable contingency that a subsequent manufacture may think up. Freightliner also posed the question whether such language makes the incomplete manufacturer responsible for the design or engineering of a system or component, not engineered according to sound engineering principles, because it is not specifically prohibited in the IVD. International and Freightliner favored a policy under which each manufacturer at each stage of manufacture is responsible for components and systems it supplies for a vehicle as well as the accuracy of information it supplies in the IVD, its addendum, or the certification. With respect to incomplete vehicle manufacturers, the language in § 567.5(b)(1)(i) and (iii), according to International and Freightliner, already accomplishes this objective of ensuring proper allocation of responsibility. International and Freightliner further argued that in addition to deleting paragraph (b)(1)(ii), NHTSA should conform paragraphs (c) and (d) pertaining to intermediate and final-stage manufacturers accordingly.

NHTSA received three comments supporting the proposed labeling requirements. GM favored the labeling requirements and noted that the revisions to part 567 will harmonize labeling requirements for multi-stage vehicles with those found in Canada. RVIA expressed support for the labeling and label content requirements. NADA commented that the labeling revisions are appropriate.

GM, DaimlerChrysler, and Freightliner responded to NHTSA's request for comments regarding whether the agency should amend 567.4(g)(1) either to specify that the name of the business entity accepting legal responsibility for a defect or noncompliance or that the names of both the vehicle assembler and the business entity accepting such legal responsibility be listed as the vehicle manufacturer on the certification label. GM commented that such a revision to § 567.4(g)(1) is unnecessary because proposed § 567.5(d)(2)(i), (f), and (g), as published, sufficiently address the issue of the manufacturer's name appearing on the certification label. DaimlerChrysler and Freightliner, however, urged NHTSA to modify § 567.4(g)(1) to allow or require the entity accepting responsibility for the vehicle to be listed as the manufacturer on the certification label. DaimlerChrysler and Freightliner commented that the current rule requiring the ''actual assembler'' to be listed on the certification label is confusing, especially when assembly is done under contract by an entity who may have no presence in the U.S. and has no public name recognition. In addition, the vehicle manufacturer, not the actual assembler, typically markets the vehicle, makes TREAD reports, and conducts safety recalls for the vehicle. Thus, according to DaimlerChrysler and Freightliner, the certification label should identify the entity that accepts legal responsibility in the U.S.

Commenters also suggested typographical changes to the part 567 language proposed in the SNPRM. First, GM and TMA noted that the definition of ''Addendum'' in § 567.3 refers to § 568.5(a), but subsection (a) does not exist. GM and TMA recommended that NHTSA change the reference to § 568.5. Second, GM and TMA commented that proposed § 567.4(g)(4)(ii) refers to multipurpose passenger vehicles as ''MPVS'' and suggested that the correct abbreviation is ''MPVs'' as found in § 567.4(g)(4)(iii). Third, GM and TMA stated § 567.4(m)(1) and (m)(2) of the proposed regulation are identical to §§ 567.4(l)(1) and (l)(2) and recommended that NHTSA delete §§ 567.4(m)(1) and (m)(2). Finally, RVIA indicated that although the text in §§ 567.1 and 567.2 refers to a certification ''label or tag,'' the word ''tag'' does not appear elsewhere in part 567. RVIA consequently recommended that NHTSA delete all references to ''tags.''

2. Agency Response to Comments on Proposed Revisions to 49 CFR Part 567

a. Addressing in Part 567 Responsibility for Noncompliances and Safety Related Defects

In the SNPRM, NHTSA proposed adding provisions to part 567 that would allocate responsibility for all duties, which includes noncompliances and safety-related defects, among incomplete vehicle manufacturers, intermediate manufacturers, and final-stage manufacturers.[10] However, it left unchanged a provision in part 573 that also address responsibility for noncompliances and safety-related defects, assigning that responsibility to the final-stage manufacturer (49 CFR 573.5(a)) and proposed with respect to multi-stage vehicles that if the manufacturers did not agree over who was responsible, the agency would determine who would conduct a notification and remedy campaign (proposed § 573.5(c)).

Currently, the final-stage manufacturer has the ultimate responsibility for notifying the agency of a noncompliance or a defect related to motor vehicle safety and of conducting a notification and remedy (recall) campaign. However, as a practical matter, the incomplete vehicle manufacturers nearly always readily conduct the recall when responsible. This basic approach under part 573 avoids delays in removing unsafe vehicles from the road. The agency is concerned that amending part 567 to allocate this responsibility among manufacturers at the various stages of production would overlap part 573, which would result in confusion and potential inconsistencies. Further, the commenters generally and some commenters specifically strongly opposed the related proposal to amend part 573 to provide for the agency to resolve disputes between manufacturers. As discussed below, the agency has decided not to amend part 573. Accordingly, the agency believes that part 568 should not be amended to address notification or remedy (recall) responsibilities for safety-related defects or noncompliances. As a result, part 568 is limited to certification responsibilities.

b. Proposed Definition of ''Readily Attachable Component''

Proposed § 567.3 would define the term ''altered vehicle,'' in part, as a previously certified vehicle ''that has been modified other than by the use of readily attachable components.'' The section also proposed to define the term ''readily attachable component'' as ''non-original equipment components and/or assemblies that can be installed without special tools or expertise and are substantially similar in design, method of attachment and safety performance to similar motor vehicle equipment offered and/or validated by the motor vehicle manufacturer for the specific model or vehicle platform on which it is being installed in conformance with the equipment manufacturer's instructions.'' Since issuing the proposed rule, the agency has reconsidered the need to separately define ''readily attachable component.'' We note that insofar as the proposed definition characterizes ''readily attachable component'' as ''non-original equipment,'' it would potentially conflict with 49 CFR 573.4, which defines ''original equipment,'' in part, as ''motor vehicle equipment (other than a tire) that was installed in or on a motor vehicle at the time of its delivery to the first purchaser.'' In light of that definition, all equipment that is on a vehicle prior to its first retail sale, including that added by an alterer, is ''original equipment.'' The proposed definition also appears to be unduly restrictive in that it would limit ''readily attachable'' components to ones that ''are substantially similar in design, method of attachment and safety performance to similar motor vehicle equipment offered and/or validated by the motor vehicle manufacturer.'' Because it could introduce uncertainty as to what constitutes an ''altered vehicle,'' and does not clarify that issue in a meaningful way, the agency has concluded that it would be best to eliminate the proposed definition of ''readily attachable component'' from this final rule. The agency has addressed the issue through interpretations and believes that this approach is satisfactory.

c. Responsibility of Incomplete Vehicle Manufacturers for Work Performed at a Later Stage of Production

We have considered International's and Freightliner's concerns about the incomplete vehicle manufacturer's responsibility for matters it has no control over. The proposal reflected a view that various manufacturers should be responsible for the components and systems that they provide. It is not clear how it impacted pass-through certification, but it could reduce the incomplete vehicle manufacturer's responsibilities under the IVD. In our view, there is no simple and easy resolution of the issue of allocation of certification responsibilities for multi-stage vehicles. A vehicle that meets FMVSS is far more than an assemblage of components and systems that are bolted or welded together. The completed vehicle must be an integrated whole that performs properly under a variety of conditions. For example, at a basic level, if an incomplete vehicle manufacturer provided a windshield defrosting and defogging system and a windshield wiping system and washing system, ordinarily one would expect that the vehicle would meet FMVSS No. 103 *Windshield Defrosting and Defogging Systems* and FMVSS No. 104 *Windshield Wiping System and Washing Systems.* However, if the final-stage manufacturer added, modified, or deleted anything that resulted in a noncompliance with one or both of these standards, there should be two consequences. First, the incomplete vehicle manufacturer would no longer be responsible and, second, the final-stage manufacturer would be responsible. Similarly, ordinarily the final-stage manufacturer of a school bus, which adds exterior features, would be expected to assure that the mirrors reveal the presence of children, as required by FMVSS No. 111 *Rearview Mirrors.*

Second, at a more complex level, a number of FMVSS involve dynamic tests of the complete vehicle. Absent completion of the vehicle within the envelope of the incomplete vehicle document, testing by the final-stage manufacturer is warranted. For example, FMVSSs for brake systems include vehicle performance requirements. The incomplete vehicle manufacturer ordinarily could not be expected to supply a brake system on a chassis that would comply with the applicable performance standards for any and all applications by a final-stage manufacturer. Similarly, the final-stage manufacturer cannot maintain that the brakes satisfied the standards simply because the brake systems and components were supplied by the incomplete vehicle manufacturer. Appropriate engineering and testing to meet performance requirements are warranted. The incomplete vehicle manufacturer can provide an IVD and, if the final-stage manufacturer adheres to the IVD, it can certify the vehicle without testing. Alternately, the final-stage manufacturer can certify the vehicle based on it own.

Third, at a more complex level, a number of Federal motor vehicle safety standards involve dynamic crash tests. In these tests, the completed vehicle must meet standards. It is far from

[10] NHTSA proposed to amend part 573 by adding a provision under which the agency would allocate responsibility in the event of a dispute.

sufficient, for example, that a vehicle has a functioning air bag or that part of the vehicle meets a test short of a crash test. *See, e.g.*, 65 FR 30698. Thus, the fact that the incomplete vehicle manufacturer supplied components or systems without more does not relieve the final-stage manufacturer of its certification responsibilities for performance that depends only in part on those components or systems in a crash.

The final rule adopts much of the SNPRM as it pertained to certification and reflects the concerns identified above. The final-stage manufacturer certifies that the vehicle meets applicable FMVSSs but can rely on the prior manufacturers' IVD. The incomplete vehicle manufacturer and intermediate manufacturers have certification responsibilities for the vehicle as further manufactured or completed by a final-stage manufacturer to the extent that the vehicle is completed in accordance with the IVD. The incomplete vehicle manufacturer and intermediate manufacturers also have certification responsibilities for equipment subject to equipment standards that they supply and for other items and associated standards in the contract between them and the next stage manufacturer(s). The fact that some components were provided by an incomplete vehicle manufacturer, absent more, does not shift responsibility for certification to them with respect to completed vehicle performance standards such as those requiring dynamic crash tests.

Some comments by incomplete vehicle manufacturers concern uncertain future events and negligent workmanship. The following indicates the difficulties inherent in providing detailed rules. Assume an incomplete vehicle manufacturer produces a school bus shell and an IVD stating that final stage manufacturer A must order certain passenger seats from company C, which it does. The seats arrive from company C complete with attaching hardware that includes special hardened fasteners. Unfortunately, the fasteners are lost. Company A obtains bolts from a local hardware store and installs the passenger seats in the school bus shell. The vehicle is tested by NHTSA and the passenger seats fails to meet FMVSS No. 222, *School Bus Passenger Seating and Crash Protection*. The question would be whether the final stage manufacturer completed the vehicle in accordance with the IVD. If, however, the passenger seats are installed with the correct attachment hardware but the incomplete vehicle manufacturer did not follow its design, omitting the reinforcing plates under the floor areas where the seats are to be mounted, the incomplete vehicle manufacturer would be responsible for the invalid certification with FMVSS No. 222.

As a second hypothetical, assume that the incomplete vehicle manufacturer's IVD provides for compliance with FMVSS No. 111 *Rearview Mirrors*. It provides mounting holes for mirrors on the incomplete vehicle and specifies certain mirrors. If the incomplete vehicle manufacturer did not follow its design, mislocating the mounting holes for attaching the mirrors, the final stage manufacturer installed the correct mirrors, and the vehicle fails to meet FMVSS No. 111, the incomplete vehicle manufacturer would be responsible for the certification violation.

d. Labeling Requirements

Given that there were not any objections, NHTSA is adopting the labeling requirements as proposed.

e. Reference to 568.5(a)

NHTSA agrees that the reference was incorrect and has corrected it, as suggested by the commenters.

f. Abbreviation of MPVs

NHTSA has corrected the abbreviation as suggested.

g. Duplicative Provisions Regarding Minimum Size of Letters and Numbers

NHTSA agrees that §§ 567.4(l) and 567.4(m) are duplicative. NHTSA intended to propose that the minimum size of the lettering and numbering be increased to 4 mm to improve readability. Accordingly, the agency is deleting § 567.4(l) and redesignating §§ 567.4(m) and 567.4(l).

h. Reference to Tags

NHTSA agrees that the reference to tags is unnecessary and should be deleted.

C. 49 CFR Part 568

1. Summary of Comments on Proposed Revisions to 49 CFR Part 568

Five commenters (GM, NADA, RVIA, NTEA, TMA) submitted comments on the proposed changes to part 568. GM and NADA generally supported the proposed revisions to part 568 to note expressly that incomplete vehicle manufacturers may incorporate by reference body builder or other design and engineering guidance into the IVD. GM and TMA suggested a technical correction to proposed §§ 568.7(a) and (b), which refer to § 568.6(b), a section that does not exist in the proposed regulation. GM and TMA recommended that the proper reference is to § 568.6. NHTSA agrees that the reference was incorrect and has corrected it, as suggested by the commenters.

NTEA indicated that it does not oppose the proposed changes to part 568. However, NTEA voiced its concern that permitting incomplete vehicle manufacturers to incorporate additional documents into the IVD could become burdensome for final-stage manufacturers and could produce the same problems that currently limit pass-through certification. NTEA stated that IVDs are often so restrictive that a final-stage manufacturer cannot accomplish pass-through certification. NTEA commented further that allowing incomplete vehicle manufacturers to incorporate by reference lengthy and complicated documents into IVDs might make it easier for incomplete vehicle manufacturers to restrict compliance envelopes. Accordingly, NTEA recommended that NHTSA require incomplete vehicle manufacturers to make available to final-stage manufacturers at no cost all documents incorporated by reference into IVDs. NTEA also urged NHTSA to require that incomplete vehicle manufacturers act in good faith to provide conformity statements that are likely to be passed through to other manufacturers (*i.e.*, that are not automatically invalidated by upfitting the vehicle in any way).

RVIA concurred with and endorsed NTEA's comments, although RVIA also submitted its own comments. RVIA's comments on the proposed changes to part 568 focused on motor home and conversion vehicle manufacturers' lack of personnel and monetary resources to comply with regulations involving dynamic crash testing or other costly tests. Due to this reported lack of resources, RVIA commented that final-stage manufacturers must rely heavily on incomplete vehicle manufacturers' IVDs in order to certify that a vehicle complies with the standards. RVIA contended that § 568.4(b) should be expanded and strengthened to require incomplete vehicle manufacturers to provide ''reasonable compliance guidelines'' in the body builder book or other documentation as part of the IVD. Reasonable compliance guidelines, according to RVIA, are necessary for final-stage manufacturers because incomplete vehicle manufacturers currently provide narrow compliance envelopes, making it difficult for final-stage manufacturers to achieve pass-through certification. NHTSA does not believe that a provision requiring incomplete vehicle manufacturers to provide ''reasonable compliance guidelines'' is necessary since it could not be effectively enforced due to the

subjectivity of the quoted language. As an alternative to amending the proposed regulation to make the inclusion of body builder or other design and engineering compliance guidance mandatory in the IVD, RVIA requested that NHTSA monitor the issue and revisit whether to add such a requirement one year after the effective date of the final rule.

2. Agency Response to Comments on Proposed Revisions to 49 CFR Part 568

a. Reference to Part 568

We have corrected the reference as suggested.

b. Making Documents Incorporated in the IVDs Freely Available

NHTSA is not adopting the suggestion that if incomplete vehicle manufacturers incorporate materials such as body builder or other design and engineering guidance, they must provide free copies of those materials. This is a marketplace issue that incomplete vehicle manufacturers and final-stage manufacturers can resolve. Incomplete vehicle manufacturers already have business reasons (*e.g.*, promoting the sales of their incomplete vehicles) to provide copies, and final-stage manufacturers already have business reasons (to produce a safe, reliable vehicle) to obtain them, even if those materials are not incorporated by reference. Incorporation of these materials will provide additional, more precise guidance, thus increasing clarity of that guidance.

c. Requiring Compliance Guidelines Be ''Reasonable'' or Prepared ''in Good Faith''

NHTSA is not adopting these suggestions. As discussed above, incomplete vehicle manufacturers have business reasons to provide workable IVDs. There is no market for incomplete vehicles that cannot be manufactured into completed vehicles that will meet the applicable FMVSSs. Further, due to its subjectivity, the suggested language is not susceptible to effective enforcement.

D. 49 CFR Part 571

1. Summary of Comments on Proposed Revisions to 49 CFR Part 571

NHTSA received comments from Ford, GM, TMA, NADA, NTEA, and RVIA on the proposed revisions to part 571. All of these commenters generally supported the proposal granting intermediate and final-stage manufacturers and alterers an automatic one-year extension to meet the new requirements of the standard. Ford commented, however, that after a completed vehicle is certified to a safety standard, NHTSA should not allow alterers to render the certification inoperative unless the alterer is changing the vehicle to a type to which the rule does not apply. NTEA suggested that the standard also provide final-stage manufacturers and alterers an additional year of leadtime when an incomplete vehicle manufacturer introduces a new model. RVIA similarly commented that the one-year extension also should apply when an incomplete vehicle manufacturer's model year changeovers require final-stage manufacturers to do additional testing or when an incomplete vehicle manufacturer certifies its vehicles late in the process, providing subsequent manufacturers with little time to determine if the changes affect compliance. RVIA noted that although the SNPRM recognized the certification difficulties faced by a final-stage manufacturer in light of substantive changes to a chassis as a result of a model year changeover, the proposed amendment to part 571 does provide an explicit one-year extension for a final-stage manufacturer to achieve compliance when a model year changeover occurs, requiring additional testing. Accordingly, RVIA urged NHTSA to amend § 571 to specify that the one-year extension applies when an incomplete vehicle manufacturer's model year changes require new testing or when an incomplete vehicle manufacturer does not provide equipment for new or additional compliance verification at least one year in advance of the effective date of compliance. For § 571.8 and other regulations, NADA suggested NHTSA use the term ''vehicle alterer'' rather than ''alterer.''

2. Agency Response to Comments on Proposed Revisions to 49 CFR Part 571

a. Proposed Automatic One-Year Extension of Effective Date

Except as noted in the next paragraph, NHTSA has decided to adopt the amendments to part 571 as proposed. No commenter opposed their adoption. Further, those commenters who addressed the amendments supported them. The agency notes that its recognition that vehicles built in two or more stages may be a vehicle type under the agency's regulations does not exclude them from motor vehicle safety standards. For example, if the vehicle is a truck, it is subject to standards applicable to trucks and is not excluded because it was built in two or more stages. Nonetheless, as with convertibles, the agency may, as appropriate, provide for particular options in its standards for multistage vehicles.

b. Eligibility of Alterers for Extension

NHTSA has decided to include alterers in the provision for additional leadtime. The agency notes that the problems faced by final-stage manufacturers in certifying that a vehicle manufactured in two or more stages complies with all applicable FMVSSs also are faced by alterers with respect to their own certification responsibilities. If a vehicle manufacturer waits until the last possible moment to certify its vehicles, alterers will not have the ability to conduct any engineering analysis to determine if their alterations will affect compliance. Therefore, the agency has decided to provide alterers with the same lead-time it is providing to final-stage manufacturers.

c. Additional Leadtime Following Introduction of New Model

NHTSA has decided not to adopt this suggestion. This issue involves business decisions that should be made by incomplete vehicle manufacturers. They need to make the design changes and other documents available to final-stage manufacturers in sufficient time so that those manufacturers can make current model year changes to the design of the vehicles they complete and ensure that those vehicles meet the FMVSSs.

d. Use of the Term ''Alterer''

NHTSA sees no need to replace the term ''alterer'' with the term ''vehicle alterer'' in part 571 or the other parts addressed in this final rule. Accordingly, no change has been made.

E. 49 CFR Part 573

1. Summary of Comments on Proposed Revisions to 49 CFR Part 573

a. NHTSA Determination of Which Manufacturer Is in the ''Best Position'' To Conduct a Recall

As discussed above, to assure a prompt resolution of the issue of recall responsibility in a multi-stage context, NHTSA proposed that the agency would allocate recall responsibility when the various manufacturers could not agree on which was the responsible party. 69 FR 36047, 36056. The majority of commenters opposed these revisions to part 573.

In its comments on the SNPRM, GM stated that historically manufacturers have been able to resolve issues of the determination of recall responsibility and asserted that this trend likely will continue in the future, thus not

requiring a NHTSA determination of which party should conduct a recall. GM further objected on the grounds that the agency would be injecting itself into evaluating the relative financial health of various manufacturers. Similarly, DaimlerChrysler expressed the concern that NHTSA should not make decisions on who should pay for a recall on the basis of the more substantial resources of an incomplete vehicle manufacturer.

International commented extensively on this proposal. International shared NHTSA's concern that a disagreement between manufacturers regarding responsibility for a safety-related defect or noncompliance could hinder manufacturers' rapid response in issuing a recall. However, International suggested that manufacturers rarely disagree regarding who should conduct a recall because they want to keep goodwill with their customers and because NHTSA's existing powers to investigate and assess penalties deter manufacturers from disagreeing to the point of necessitating NHTSA involvement. International further expressed its belief that this section would give NHTSA the power to order a manufacturer to conduct a recall even though neither NHTSA nor the manufacturer has determined that a defect or noncompliance exists in the equipment it manufactured. Moreover, International questioned whether NHTSA has the necessary statutory authority to require a recall in such circumstances.

Ford suggested that allowing NHTSA to determine responsibility might cause intermediate and final-stage manufacturers to try to avoid recall responsibility, shifting the recall burden to incomplete vehicle manufacturers.

DaimlerChrysler and Freightliner, a DaimlerChrysler Company, argued that part 573 should not be revised to permit NHTSA to decide which manufacturer is in the best position to conduct a recall. They commented that NHTSA has proposed no standards to evaluate which party is in the best position to conduct a recall and has not identified sufficiently when NHTSA would intervene, other than when parties disagree about responsibility. DaimlerChrysler, which had its own proposal on allocation of responsibility that appeared in the SNPRM (p. 36047), commented that, upon a determination by NHTSA that another manufacturer is in the best position to conduct the recall, the proposed amendment to § 573.5 seemingly would permit NHTSA to override the allocations of recall responsibility for certification proposed in § 567.5 to impose responsibility on a manufacturer other than the manufacturer responsible under § 567.5. Moreover, DaimlerChrysler and Freightliner stated that although NHTSA expects few instances would arise in which a dispute occurs between manufacturers regarding recall responsibility, enacting this type of ''referee'' provision would cause more disputes and delays and would thrust NHTSA into the middle of commercial disputes from which it has traditionally removed itself for good reason. DaimlerChrysler and Freightliner added that NHTSA's involvement in a determination of responsibility would complicate the recalling manufacturer's ability to recover expenses from the responsible party, as is currently done, as courts or arbitrators likely would give considerable weight to NHTSA determinations regarding which entities are best suited to conduct recalls. DaimlerChrysler and Freightliner also questioned whether this ''referee provision'' is consistent with the Vehicle Safety Act.

TMA commented that absent the proposed provision, NHTSA nonetheless would possess the necessary authority to issue a determination of responsibility.

NTEA and RVIA submitted comments supporting the proposed changes to allow NHTSA to determine which manufacturer is in the best position to conduct a recall. Both NTEA and RVIA noted the financial hardships for final-stage manufacturers when they conduct recalls, regardless of whether they are responsible for the defect or noncompliance. NTEA added that each manufacturer responsible for a particular defect or noncompliance should conduct its own recall.

b. Nonreviewability of NHTSA Determination

Under a system in which NHTSA may assign the incomplete vehicle manufacturer ultimate responsibility for a recall, to assure the speedy implementation of a recall, NHTSA proposed that its resolution of any dispute would have to be both final and non-reviewable. *See* 69 FR 36056. The commenters who opposed NHTSA determining which manufacturer is in the best position to conduct a recall also expressed disapproval of the nonreviewability of such a decision. DaimlerChrysler and Freightliner commented that NHTSA does not have the authority to deem its decisions nonreviewable, as a provision allowing nonreviewable agency decisions would be inconsistent with the Administrative Procedure Act. DaimlerChrysler and Freightliner agreed with NHTSA's statement in the SNPRM that a court would likely review an agency decision unless it is deemed something other than a final agency action. Additionally, DaimlerChrysler and Freightliner expressed confusion regarding how a manufacturer's right to judicial review of a NHTSA determination of a defect or noncompliance under 49 U.S.C. 30118 would be reconciled with a nonreviewable order that a manufacturer conduct a recall. DaimlerChrysler and Freightliner also expressed a lack of understanding of the difference between an order under 49 U.S.C. 30118(b) that requires a manufacturer to provide notice and a remedy (*i.e.*, a recall) and may be contested in court, and an order under proposed § 573.5 that would require a manufacturer to conduct a recall but could not be contested.

Ford also commented that NHTSA decisions allocating recall responsibility must be judicially reviewable. GM and TMA indicated that even if manufacturers could not resolve a dispute regarding recall responsibility, NHTSA instead could issue a determination of responsibility without necessitating that the decision be nonreviewable. Nonreviewability of a NHTSA determination regarding which party is in the best position to conduct a recall, according to International, could cause a chilling effect on manufacturers' willingness to report possible defects or noncompliance to NHTSA.

NTEA recognized NHTSA's concerns regarding nonreviewability, commenting that NHTSA could eliminate or change the proposal but should not change the other proposed amendments to part 573.

c. Suggested Alternative Language for Section 573.5

During the negotiated rulemaking process, DaimlerChrysler proposed alternative language for allocating recall responsibility between the incomplete vehicle manufacturer and final-stage manufacturer. Daimler Chrysler suggested that the allocation of legal responsibility in § 567.5 be repeated in § 573.5 and offered language. The language offered by DaimlerChrysler was reprinted in the preamble to the SNPRM. 69 FR 36047; but see 69 FR 36056. In their comments responding to the SNPRM, Ford and TMA indicated that the language offered by DaimlerChrysler was preferable to the language proposed by NHTSA, which they flatly opposed.

Although acknowledging that the proposed changes to § 573.5 should not impact directly dealers' involvement in safety recalls, NADA offered the

following substitute language for § 573.5(c):

In the event of a safety-related defect or noncompliance involving a motor vehicle manufactured in two or more stages, each incomplete, intermediate, final-stage or equipment manufacturer is responsible if the defect or noncompliance involved its workmanship or the components or systems it supplied.

Under its proposed language, NADA indicated that NHTSA might occasionally need to determine who is responsible for a defect or noncompliance, but not who is in the best position to conduct a recall. Manufacturers, according to NADA, usually will determine responsibility voluntarily.

NTEA acknowledged the alternative offered by DaimlerChrysler, commenting that the DaimlerChrysler language appears to adopt NHTSA's original proposal, except that it does not discuss allocation of responsibility in the event of a dispute. NTEA indicated its support for the DaimlerChrysler language as well as NHTSA's original proposal.

2. Agency Response to Comments on Proposed Revisions to 49 CFR Part 573

a. NHTSA Determination of Which Manufacturer Is in the Best Position To Conduct a Recall

In response to the public comments on proposed § 573.5(c) permitting the agency to determine which manufacturer is in the best position to conduct a recall, NHTSA has re-examined the merits of this proposal. NHTSA's primary concern is safety; NHTSA is also concerned that the rule be workable. The most compelling fact is that under existing § 573.5, in general, recalls are not delayed by disputes between manufacturers. In fact, practical disputes rarely occur; the last known one of any significance occurred prior to 1990. It is clear from this fact that the private parties are able to resolve and in fact are successfully resolving the issues regarding the conducting of recalls in almost all instances under the existing regulatory structure without the suggestion of any possible need for intervention by the agency. NHTSA has no reason to believe that there will be any greater need for agency intervention in the future. In addition, the proposal was not well received. Accordingly, the agency has decided not to adopt the proposed provision.

b. Nonreviewability of NHTSA Determination

In light of the agency's decision not to adopt the proposed provision for agency determinations as to which party is in the best position to conduct a particular recall, the proposal to make agency determinations nonreviewable is moot. Also, there were substantial objections to, and a number of substantial questions about, the merits of this proposal.

c. Suggested Alternative Language for Section 573.5

The agency has decided not to add to § 573.5 the language suggested by DaimlerChrysler. Further, the agency is not adding an alternative suggestion regarding the allocation of responsibility in the event of a dispute. As discussed above, NHTSA's interest, commensurate with the public interest, is for a rapid and final resolution of recall responsibility so as to have unsafe motor vehicles repaired as soon as possible. In the context of the manufacturer's independent duty under 49 U.S.C. 30118(c) to give notification of and to remedy safety defects that it learns of (*United States* v. *General Motors Corp.,* 574 F. Supp. 1047, 1049 (D.D.C. 1983)), the existing rule meets the fundamental safety need for prompt recalls. As General Motors noted, historically, incomplete and final-stage manufacturers have been able to resolve issues of determination of responsibility. If not, the default assignment of responsibility is to the final-stage manufacturer, which retains its right to seek indemnification or contribution from the incomplete vehicle manufacturer. This has been NHTSA's historical position (*see* 58 FR 40402) and it has stood the test of time. In addition, we have substantial doubts that a formulaic approach offered by DaimlerChrysler would work as needed for safety-related defects. It does not provide a truly bright line test. As NADA recognized, disputes would arise under it. From a safety perspective, the best resolution is to leave the rule where as it now stands. We would add that this provides an incentive for a final-stage manufacturer to deal with a solid and reputable incomplete vehicle manufacturer. If the rule were cast to impose recall responsibility on the incomplete vehicle manufacturer, final-stage manufacturers' interests in lower production costs likely would in some instances result in the final-stage manufacturers' acquisition and use of incomplete vehicles that would not withstand the rigors of the road as well as those offered at higher prices by competing incomplete vehicle manufacturers. There would be considerable practical issues in obtaining an effective recall by bargain basement incomplete vehicle manufacturers. For example, in recent years, we have seen a significant influx of low price imports of low quality equipment from essentially unknown foreign manufacturers with no corporate presence in the United States.

F. Other Issues

1. Early Warning Reporting

DaimlerChrysler and Freightliner noted that the rule proposed in the SNPRM does not address the issue of responsibility of incomplete or intermediate vehicle manufacturers with respect to part 579 and the Early Warning Reporting rules. DaimlerChrysler and Freightliner observed that although NHTSA has issued interpretations recognizing final-stage manufacturers as the ''vehicle manufacturers'' under the early warning rules, final-stage manufacturers in many cases do not receive consumer complaints or carry out warranty work on primary vehicle systems. Accordingly, DaimlerChrysler and Freightliner suggested that if NHTSA adopts regulations altering the responsibilities of incomplete, intermediate, and final-stage manufacturers, it simultaneously should consider revising its interpretations of the early warning rules.

Agency response: As the issue raised by DaimlerChrysler and Freightliner is outside scope of this rulemaking, we are not addressing it in this final rule. This may be considered in the assessment of the early warning program, which we expect to begin in about two years. *See* 69 FR 57867 (September 28, 2004).

2. Safety of Altering Certified Vehicles

NADA objected to preambular statements regarding vehicle alteration, particularly the suggestion that vehicle alterations are inherently wrong and that NHTSA disfavors vehicle alterations made after the first sale of a vehicle for purposes other than retail.

Agency response: Alterations to a certified vehicle prior to first retail sale are not viewed with disfavor by the agency, provided the alterer certifies the vehicle as continuing to comply with the FMVSS affected by the alterations. Alterers of cargo vans, for example, who install work-performing equipment in a completed vehicle, should be treated no differently than a final-stage manufacturer who installs the same work-performing equipment in an incomplete vehicle. However, the agency does view with disfavor vehicle modifications, performed after first retail sale, that take a vehicle out of compliance with applicable FMVSSs, except as permitted under 49 CFR part

595 to accommodate persons with disabilities.

3. Effective Date

GM and TMA suggested that the effective date for the rule be the first occurrence of September 1, one year following publication of the Final Rule. GM indicated that this is a reasonable effective date, given that manufacturers may need time to implement several of the proposed requirements pertaining to labeling and documentation. TMA stipulated that this effective date will allow TMA members time for reviewing and updating their IVD and/or body builder books.

Agency response: The agency has decided to adopt the suggestion of GM and TMA. The agency believes that their suggested date will provide a reasonable period of time to come into compliance. Thus, the effective date will be September 1, 2006.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking document under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined to be nonsignificant under the Department's regulatory policies and procedures.

This rule does not impose any additional costs on regulated parties or on the American public since it merely clarifies legal responsibilities related to the certification of vehicles built in two or more stages. To the extent that incomplete vehicle manufacturers accept legal responsibility for their vehicles, they may incur some additional certification costs. Likewise, they will incur additional costs in the event of a recall resulting from their statements on the information label or in the IVD. As a practical matter, most incomplete vehicle manufacturers have been willing to pay for recalls associated with work performed by the incomplete vehicle manufacturer or within the scope of their representations in the IVD even though there has been no express legal requirement that they do so.

B. Regulatory Flexibility Act

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I certify that this action does not have a significant economic impact on a substantial number of small businesses. Although a significant number of final-stage manufacturers and alterers are small businesses, this rule does not have a significant economic impact on these entities. It provides for a new process for temporary exemptions from dynamic crash testing performance requirements. It recognizes multi-stage vehicles as a vehicle type, which allows for adoption of standards with options for them. It provides for full use of pass-through certifications beyond chassis-cabs. It thus reduces burdens on final-stage manufacturers, many of which are small businesses.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it does not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule does not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. The final rule is not intended to preempt state tort civil actions.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 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 more than $100 million annually (adjusted for inflation with base year of 1995). The final rule does not require the expenditure of resources above and beyond $100 million annually.

F. Executive Order 12778 (Civil Justice Reform)

The final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule contains a collection of information because it expands the number of information labels required beyond manufacturers of chassis-cabs. There is no burden to the general public.

This final rule includes the following ''collections of information,'' as that term is defined in 5 CFR part 1320 Controlling Paperwork Burdens on the Public:

Today's final rule requires information labels similar to a certification label for incomplete vehicles that are not chassis-cabs. At present, OMB has approved NHTSA's collection of labeling requirements under OMB clearance no. 2127–0512, Consolidated Labeling Requirements for Motor Vehicles (Except the Vehicle Identification Number). A request for extension of the clearance for these requirements is pending at OMB. *See also* 69 FR 70168.

For the following reasons, NHTSA estimates that the new information labels will have a minimal net increase in the information collection burden on the public.[11] There are approximately 40 incomplete motor vehicle manufacturers that will be affected by this labeling requirement, and the labels will be placed on approximately 556,000 vehicles per year. The label will be placed on each vehicle by the incomplete vehicle manufacturer and each intermediate manufacturer once. Since, in this final rule, NHTSA specifies the exact content of the labels, the manufacturers will spend 0 hours developing the labels. NHTSA estimates the technical burden time (time required for affixing labels) to be .0002 hours per label. NHTSA estimates that the total

[11] No commenter questioned these calculations, which also appeared in the SNPRM, albeit without an estimation of the burden on intermediate manufacturers.

annual burden imposed on the public as a result of the incomplete vehicle manufacturer labels will be 116 hours (556,600 vehicles multiplied by .0002 hours per label multiplied by 1.5, representing an estimate that intermediate manufacturers will be involved in the production of half of the vehicles affected). Canada already requires labels of the type contemplated in today's notice on incomplete vehicles manufactured for the Canadian market, and the larger incomplete vehicle manufacturers already install this label on a voluntary basis for vehicles sold in the United States.

H. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking is not economically significant.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [12] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, with an explanation of the reasons for not using such standards. This rulemaking only addresses the allocation of legal responsibilities among regulated parties. As such, the issues involved here are not amenable to the development of voluntary standards.

[12] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

In consideration of the foregoing, NHTSA amends 49 CFR chapter V as follows:

List of Subjects in 49 CFR Parts 555, 567, 568, and 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

■ 1. The authority citation for part 555 of title 49 continues to read as follows:

Authority: 49 U.S.C. 30113, 32502, Pub. L. 105–277; delegation of authority at 49 CFR 1.50.

■ 2. Part 555 is amended by designating §§ 555.1 through 555.10 as subpart A and by adding a heading to read as follows:

Subpart A—General

■ 3. Paragraph (b)(6) of § 555.5 is revised to read as follows:

§ 555.5 Application for exemption.

* * * * *

(b) * * *

(6) Specify any part of the information and data submitted which petitioner requests be withheld from public disclosure in accordance with part 512 of this chapter.

(i) The information and data which petitioner requests be withheld from public disclosure must be submitted in accordance with § 512.4 of this chapter.

(ii) The petitioner's request for withholding from public disclosure must be accompanied by a certification in support as set forth in appendix A to part 512 of this chapter.

* * * * *

■ 4. Subpart B is added to read as follows:

Subpart B—Vehicles Built In Two or More Stages and Altered Vehicles

Sec.

555.11 Application.
555.12 Petition for exemption.
555.13 Basis for petition.
555.14 Processing of petitions.
555.15 Time period for exemptions.
555.16 Renewal of exemptions.
555.17 Termination of temporary exemptions.
555.18 Temporary exemption labels.

Subpart B—Vehicles Built in Two or More Stages and Altered Vehicles

§ 555.11 Application.

This subpart applies to alterers and manufacturers of motor vehicles built in two or more stages to which one or more standards are applicable. No manufacturer or alterer that produces or alters a total exceeding 10,000 motor vehicles annually shall be eligible for a temporary exemption under this subpart. Any exemption granted under this subpart shall be limited, per manufacturer, to 2,500 vehicles to be sold in the United States in any 12 consecutive month period. Nothing in this subpart prohibits an alterer, an intermediate manufacturer, a manufacturer of incomplete vehicles other than chassis-cabs, or a final-stage manufacturer from applying for a temporary exemption under subpart A of this part.

§ 555.12 Petition for exemption.

An alterer, intermediate or final-stage manufacturer, or industry trade association representing a group of alterers, intermediate and/or final-stage manufacturers may seek, as to any vehicle configuration built in two or more stages, a temporary exemption or a renewal of a temporary exemption from any performance requirement for which a Federal motor vehicle safety standard specifies the use of a dynamic crash test procedure to determine compliance. Each petition for an exemption under this section must be submitted to NHTSA and must:

(a) Be written in the English language;

(b) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590;

(c) State the full name and address of the applicant, the nature of its organization (*e.g.,* individual, partnership, corporation, or trade association), the name of the State or country under the laws of which it is organized, and the name of each alterer, or intermediate and/or final-stage manufacturer for which the exemption is sought;

(d) State the number, title, paragraph designation, and the text or substance of the portion(s) of the standard(s) from which the exemption is sought;

(e) Describe by type and use each vehicle configuration (or range of vehicle configurations) for which the exemption is sought;

(f) State the estimated number of units of each vehicle configuration to be produced annually by each of the manufacturer(s) for whom the exemption is sought;

(g) Specify any part of the information and data submitted which the petitioner requests be withheld from public disclosure in accordance with part 512 of this chapter, as provided by § 555.5(b)(6).

(1) The information and data which petitioner requests be withheld from public disclosure must be submitted in accordance with § 512.4 of this chapter.

(2) The petitioner's request for withholding from public disclosure must be accompanied by a certification in support as set forth in appendix A to part 512 of this chapter.

§ 555.13 Basis for petition.

The petition shall:

(a) Discuss any factors (*e.g.,* demand for the vehicle configuration, loss of market, difficulty in procuring goods and services necessary to conduct dynamic crash tests) that the applicant desires NHTSA to consider in deciding whether to grant the application based on economic hardship.

(b) Explain the grounds on which the applicant asserts that the application of the dynamic crash test requirements of the standard(s) in question to the vehicles covered by the application would cause substantial economic hardship to each of the manufacturers on whose behalf the application is filed, providing a complete financial statement for each manufacturer and a complete description of each manufacturer's good faith efforts to comply with the standards, including a discussion of:

(1) The extent that no Type (1) or Type (2) statement with respect to such standard is available in the incomplete vehicle document furnished, per part 568 of this chapter, by the incomplete vehicle manufacturer or by a prior intermediate-stage manufacturer or why, if one is available, it cannot be followed, and

(2) The existence, or lack thereof, of generic or cooperative testing that would provide a basis for demonstrating compliance with the standard(s);

(c) Explain why the requested temporary exemption would not unreasonably degrade safety.

§ 555.14 Processing of petitions.

The Administrator shall notify the petitioner whether the petition is complete within 30 days of receipt. The Administrator shall attempt to approve or deny any complete petition submitted under this subpart within 120 days after the agency acknowledges that the application is complete. Upon good cause shown, the Administrator may review a petition on an expedited basis.

§ 555.15 Time period for exemptions.

Subject to § 555.16, each temporary exemption granted by the Administrator under this subpart shall be in effect for a period of three years from the effective date. The Administrator shall identify each exemption by a unique number.

§ 555.16 Renewal of exemptions.

An alterer, intermediate or final-stage manufacturer or a trade association representing a group of alterers or, intermediate and/or final-stage manufacturers may apply for a renewal of a temporary exemption. Any such renewal petition shall be filed at least 60 days prior to the termination date of the existing exemption and shall include all the information required in an initial petition. If a petition for renewal of a temporary exemption that meets the requirements of this subpart has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the petition for renewal.

§ 555.17 Termination of temporary exemptions.

The Administrator may terminate or modify a temporary exemption if (s)he determines that:

(a) The temporary exemption was granted on the basis of false, fraudulent, or misleading representations or information; or

(b) The temporary exemption is no longer consistent with the public interest and the objectives of the Act.

§ 555.18 Temporary exemption labels.

An alterer or final-stage manufacturer of a vehicle that is covered by one or more exemptions issued under this subpart shall affix a label that meets meet all the requirements of 49 CFR 555.9.

■ 5. Part 567 is revised to read as follows:

PART 567—CERTIFICATION

Sec.

567.1 Purpose.
567.2 Application.
567.3 Definitions.
567.4 Requirements for manufacturers of motor vehicles.
567.5 Requirements for manufacturers of vehicles manufactured in two or more stages.
567.6 Requirements for persons who do not alter certified vehicles or do so with readily attachable components.
567.7 Requirements for persons who alter certified vehicles.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50.

§ 567.1 Purpose.

The purpose of this part is to specify the content and location of, and other requirements for, the certification label to be affixed to motor vehicles as required by the National Traffic and Motor Vehicle Safety Act, as amended (the Vehicle Safety Act) (49 U.S.C. 30115) and the Motor Vehicle Information and Cost Savings Act, as amended (the Cost Savings Act), (49 U.S.C. 30254 and 33109), to address certification-related duties and liabilities, and to provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards (part 571 of this chapter), Bumper Standards (part 581 of this chapter), and Federal Theft Prevention Standards (part 541 of this chapter), are applicable to the vehicle.

§ 567.2 Application.

(a) This part applies to manufacturers including alterers of motor vehicles to which one or more standards are applicable.

(b) In the case of imported motor vehicles that do not have the label required by 49 CFR 567.4, Registered Importers of vehicles admitted into the United States under 49 U.S.C. 30141–30147 and 49 CFR part 591 must affix a label as required by 49 CFR 567.4, after the vehicle has been brought into conformity with the applicable Safety, Bumper and Theft Prevention Standards.

§ 567.3 Definitions.

All terms that are defined in the Act and the rules and standards issued under its authority are used as defined therein. The term ''bumper'' has the meaning assigned to it in Title I of the Cost Savings Act and the rules and standards issued under its authority.

Addendum means the document described in § 568.5 of this chapter.

Altered vehicle means a completed vehicle previously certified in accordance with § 567.4 or § 567.5 that has been altered other than by the addition, substitution, or removal of readily attachable components, such as mirrors or tire and rim assemblies, or by minor finishing operations such as

painting, before the first purchase of the vehicle other than for resale, in such a manner as may affect the conformity of the vehicle with one or more Federal Motor Vehicle Safety Standard(s) or the validity of the vehicle's stated weight ratings or vehicle type classification.

Alterer means a person who alters by addition, substitution, or removal of components (other than readily attachable components) a certified vehicle before the first purchase of the vehicle other than for resale.

Chassis-cab means an incomplete vehicle, with a completed occupant compartment, that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended functions.

Completed vehicle means a vehicle that requires no further manufacturing operations to perform its intended function.

Final-stage manufacturer means a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed vehicle.

Incomplete trailer means a vehicle that is capable of being drawn and that consists, at a minimum, of a chassis (including the frame) structure and suspension system but needs further manufacturing operations performed on it to become a completed vehicle.

Incomplete vehicle means

(1) An assemblage consisting, at a minimum, of chassis (including the frame) structure, power train, steering system, suspension system, and braking system, in the state that those systems are to be part of the completed vehicle, but requires further manufacturing operations to become a completed vehicle; or

(2) An incomplete trailer.

Incomplete vehicle document or *IVD* means the document described in 49 CFR 568.4(a) and (b).

Incomplete vehicle manufacturer means a person who manufactures an incomplete vehicle by assembling components none of which, taken separately, constitute an incomplete vehicle.

Intermediate manufacturer means a person, other than the incomplete vehicle manufacturer or the final-stage manufacturer, who performs manufacturing operations on a vehicle manufactured in two or more stages.

§ 567.4 Requirements for manufacturers of motor vehicles.

(a) Each manufacturer of motor vehicles (except vehicles manufactured in two or more stages) shall affix to each vehicle a label, of the type and in the manner described below, containing the statements specified in paragraph (g) of this section.

(b) The label shall be riveted or permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(c) Except for trailers and motorcycles, the label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position, or if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. If none of the preceding locations is practicable, notification of that fact, together with drawings or photographs showing a suggested alternate location in the same general area, shall be submitted for approval to the Administrator, National Highway Traffic Safety Administration, Washington, D.C. 20590. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(d) The label for trailers shall be affixed to a location on the forward half of the left side, such that it is easily readable from outside the vehicle without moving any part of the vehicle.

(e) The label for motorcycles shall be affixed to a permanent member of the vehicle as close as is practicable to the intersection of the steering post with the handle bars, in a location such that it is easily readable without moving any part of the vehicle except the steering system.

(f) The lettering on the label shall be of a color that contrasts with the background of the label.

(g) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(1) Name of manufacturer: Except as provided in paragraphs (g)(1)(i), (ii) and (iii) of this section, the full corporate or individual name of the actual assembler of the vehicle shall be spelled out, except that such abbreviations as ''Co.'' or ''Inc.'' and their foreign equivalents, and the first and middle initials of individuals, may be used. The name of the manufacturer shall be preceded by the words ''Manufactured By'' or ''Mfd By.'' In the case of imported vehicles to which the label required by this section is affixed by the Registered Importer, the name of the Registered Importer shall also be placed on the label in the manner described in this paragraph, directly below the name of the actual assembler.

(i) If a vehicle is assembled by a corporation that is controlled by another corporation that assumes responsibility for conformity with the standards, the name of the controlling corporation may be used.

(ii) If a vehicle is fabricated and delivered in complete but unassembled form, such that it is designed to be assembled without special machinery or tools, the fabricator of the vehicle may affix the label and name itself as the manufacturer for the purposes of this section.

(iii) If a trailer is sold by a person who is not its manufacturer, but who is engaged in the manufacture of trailers and assumes legal responsibility for all duties and liabilities imposed by the Act with respect to that trailer, the name of that person may appear on the label as the manufacturer. In such a case the name shall be preceded by the words ''Responsible Manufacturer'' or ''Resp Mfr.''

(2) Month and year of manufacture: This shall be the time during which work was completed at the place of main assembly of the vehicle. It may be spelled out, as ''June 2000'', or expressed in numerals, as ''6/00''.

(3) ''Gross Vehicle Weight Rating'' or ''GVWR'' followed by the appropriate value in pounds, which shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the number of the vehicle's designated seating positions. However, for school buses the minimum occupant weight allowance shall be 120 pounds per passenger and 150 pounds for the driver.

(4) ''Gross Axle Weight Rating'' or ''GAWR,'' followed by the appropriate value in pounds, for each axle, identified in order from front to rear (*e.g.,* front, first intermediate, second intermediate, rear). The ratings for any consecutive axles having identical gross axle weight ratings when equipped with tires having the same tire size designation may, at the option of the manufacturer, be stated as a single value, with the label indicating to which axles the ratings apply.

Examples of combined ratings:
GAWR:

(a) All axles—2,400 kg (5,290 lb) with LT245/75R16(E) tires.

(b) Front—5,215 kg (11,500 lb) with 295/75R22.5(G) tires.

First intermediate to rear—9,070 kg (20,000 lb) with 295/75R22.5(G) tires.

(5) One of the following statements, as appropriate:

(i) For passenger cars, the statement: ''This vehicle conforms to all applicable

Federal motor vehicle safety, bumper, and theft prevention standards in effect on the date of manufacture shown above.'' The expression ''U.S.'' or ''U.S.A.'' may be inserted before the word ''Federal''.

(ii) In the case of multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 6,000 pounds or less, the statement: ''This vehicle conforms to all applicable Federal motor vehicle safety and theft prevention standards in effect on the date of manufacture shown above.'' The expression ''U.S.'' or ''U.S.A.'' may be inserted before the (word ''Federal'').

(iii) In the case of multipurpose passenger vehicles (MPVs) and trucks with a GVWR of over 6,000 pounds, the statement: ''This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above.'' The expression ''U.S.'' or ''U.S.A.'' may be inserted before the word ''Federal''.

(6) Vehicle identification number.

(7) The type classification of the vehicle as defined in § 571.3 of this chapter (e.g., truck, MPV, bus, trailer).

(h) *Multiple GVWR–GAWR ratings.* (1) (For passenger cars only) In cases in which different tire sizes are offered as a customer option, a manufacturer may at its option list more than one set of values for GVWR and GAWR, to meet the requirements of paragraphs (g) (3) and (4) of this section. If the label shows more than one set of weight rating values, each value shall be followed by the phrase ''with _tires,'' inserting the proper tire size designations. A manufacturer may, at its option, list one or more tire sizes where only one set of weight ratings is provided.

Example: Passenger Car

GVWR: 4,400 lb with P195/65R15 tires; 4,800 lb with P205/75R15 tires.

GAWR: Front—2,000 lb with P195/65R15 tires at 24 psi; 2,200 lb with P205/75R15 tires at 24 psi. Rear—2,400 lb with P195/65R15 tires at 28 psi; 2,600 lb with P205/75R15 tires at 28 psi.

(2) (For multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles) The manufacturer may, at its option, list more than one GVWR-GAWR-tire-rim combination on the label, as long as the listing contains the tire-rim combination installed as original equipment on the vehicle by the manufacturer and conforms in content and format to the requirements for tire-rim-inflation information set forth in Standard Nos. 110, 120, 129 and 139 (§§ 571.110, 571.120, 571.129 and 571.139 of this chapter).

(3) At the option of the manufacturer, additional GVWR–GAWR ratings for operation of the vehicle at reduced speeds may be listed at the bottom of the certification label following any information that is required to be listed.

(i) [Reserved]

(j) A manufacturer may, at its option, provide information concerning which tables in the document that accompanies the vehicle pursuant to § 575.6(a) of this chapter apply to the vehicle. This information may not precede or interrupt the information required by paragraph (g) of this section.

(k) In the case of passenger cars imported into the United States under 49 CFR 591.5(f) to which the label required by this section has not been affixed by the original assembler of the passenger car, a label meeting the requirements of this paragraph shall be affixed before the vehicle is imported into the United States, if the car is from a line listed in Appendix A of 49 CFR part 541. This label shall be in addition to, and not in place of, the label required by paragraphs (a) through (j), inclusive, of this section.

(1) The label shall be riveted or permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(2) The label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position, or, if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(3) The lettering on the label shall be of a color that contrasts with the background of the label.

(4) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(i) Model year (if applicable) or year of manufacture and line of the vehicle, as reported by the manufacturer that produced or assembled the vehicle. ''Model year'' is used as defined in § 565.3(h) of this chapter. ''Line'' is used as defined in § 541.4 of this chapter.

(ii) Name of the importer. The full corporate or individual name of the importer of the vehicle shall be spelled out, except that such abbreviations as ''Co.'' or ''Inc.'' and their foreign equivalents and the middle initial of individuals, may be used. The name of the importer shall be preceded by the words ''Imported By''.

(iii) The statement: ''This vehicle conforms to the applicable Federal motor vehicle theft prevention standard in effect on the date of manufacture.''

(l)(1) In the case of a passenger car imported into the United States under 49 CFR 591.5(f) which does not have a vehicle identification number that complies with 49 CFR 565.4 (b), (c), and (g) at the time of importation, the Registered Importer shall permanently affix a label to the vehicle in such a manner that, unless the label is riveted, it cannot be removed without being destroyed or defaced. The label shall be in addition to the label required by paragraph (a) of this section, and shall be affixed to the vehicle in a location specified in paragraph (c) of this section.

(2) The label shall contain the following statement, in the English language, lettered in block capitals and numerals not less than 4 mm high, with the location on the vehicle of the original manufacturer's identification number provided in the blank: ORIGINAL MANUFACTURER'S IDENTIFICATION NUMBER SUBSTITUTING FOR U.S. VIN IS LOCATED _____.

§ 567.5 Requirements for manufacturers of vehicles manufactured in two or more stages.

(a) *Location of information labels for incomplete vehicles.* Each incomplete vehicle manufacturer or intermediate vehicle manufacturer shall permanently affix a label to each incomplete vehicle, in the location and form specified in § 567.4, and in a manner that does not obscure other labels. If the locations specified in 49 CFR 567.4(c) are not practicable, the label may be provided as part of the IVD package so that it can be permanently affixed in the acceptable locations provided for in that subsection when the vehicle is sufficiently manufactured to allow placement in accordance therewith.

(b) *Incomplete vehicle manufacturers.* (1) Except as provided in paragraph (f) of this section and notwithstanding the certification of a final-stage manufacturer under 49 CFR 567.5(d)(2)(v), each manufacturer of an incomplete vehicle assumes legal responsibility for all certification-related duties and liabilities under the Vehicle Safety Act with respect to:

(i) Components and systems it installs or supplies for installation on the incomplete vehicle, unless changed by a subsequent manufacturer;

(ii) The vehicle as further manufactured or completed by an intermediate or final-stage manufacturer, to the extent that the

vehicle is completed in accordance with the IVD; and

(iii) The accuracy of the information contained in the IVD.

(2) Except as provided in paragraph (f) of this section, each incomplete vehicle manufacturer shall affix an information label to each incomplete vehicle that contains the following statements:

(i) Name of incomplete vehicle manufacturer preceded by the words ''incomplete vehicle MANUFACTURED BY'' or ''incomplete vehicle MFD BY''.

(ii) Month and year of manufacture of the incomplete vehicle. This may be spelled out, as in ''JUNE 2000'', or expressed in numerals, as in ''6/00''. No preface is required.

(iii) ''Gross Vehicle Weight Rating'' or ''GVWR'' followed by the appropriate value in kilograms and (pounds), which shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the number of the vehicle's designated seating positions, if known. However, for school buses the minimum occupant weight allowance shall be 120 pounds per passenger and 150 pounds for the driver.

(iv) ''Gross Axle Weight Rating'' or ''GAWR,'' followed by the appropriate value in kilograms and (pounds) for each axle, identified in order from front to rear (*e.g.*, front, first intermediate, second intermediate, rear). The ratings for any consecutive axles having identical gross axle weight ratings when equipped with tires having the same tire size designation may be stated as a single value, with the label indicating to which axles the ratings apply.

(v) Vehicle Identification Number.

(c) *Intermediate manufacturers.* (1) Except as provided in paragraphs (f) and (g) of this section and notwithstanding the certification of a final-stage manufacturer under § 567.5(d)(2)(v), each intermediate manufacturer of a vehicle manufactured in two or more stages assumes legal responsibility for all certification-related duties and liabilities under the Vehicle Safety Act with respect to:

(i) Components and systems it installs or supplies for installation on the incomplete vehicle, unless changed by a subsequent manufacturer;

(ii) The vehicle as further manufactured or completed by an intermediate or final-stage manufacturer, to the extent that the vehicle is completed in accordance with the addendum to the IVD furnished by the intermediate vehicle manufacturer;

(iii) Any work done by the intermediate manufacturer on the incomplete vehicle that was not performed in accordance with the IVD or an addendum of a prior intermediate manufacturer; and

(iv) The accuracy of the information in any addendum to the IVD furnished by the intermediate vehicle manufacturer.

(2) Except as provided in paragraphs (f) and (g) of this section, each intermediate manufacturer of an incomplete vehicle shall affix an information label, in a manner that does not obscure the labels applied by previous stage manufacturers, to each incomplete vehicle, which contains the following statements:

(i) Name of intermediate manufacturer, preceded by the words ''INTERMEDIATE MANUFACTURE BY'' or ''INTERMEDIATE MFR''.

(ii) Month and year in which the intermediate manufacturer performed its last manufacturing operation on the incomplete vehicle. This may be spelled out, as ''JUNE 2000'', or expressed as numerals, as ''6/00''. No preface is required.

(iii) ''Gross Vehicle Weight Rating'' or ''GVWR'', followed by the appropriate value in kilograms and (pounds), if different from that identified by the incomplete vehicle manufacturer.

(iv) ''Gross Axle Weight Rating'' or ''GAWR'' followed by the appropriate value in kilograms and (pounds), if different from that identified by the incomplete vehicle manufacturer.

(v) Vehicle identification number.

(d) *Final-stage manufacturers.* (1) Except as provided in paragraphs (f) and (g) of this section, each final-stage manufacturer of a vehicle manufactured in two or more stages assumes legal responsibility for all certification-related duties and liabilities under the Vehicle Safety Act, except to the extent that the incomplete vehicle manufacturer or an intermediate manufacturer has provided equipment subject to a safety standard or expressly assumed responsibility for standards related to systems and components it supplied and except to the extent that the final-stage manufacturer completed the vehicle in accordance with the prior manufacturers' IVD or any addendum furnished pursuant to 49 CFR part 568, as to the Federal motor vehicle safety standards fully addressed therein.

(2) Except as provided in paragraphs (f) and (g) of this section, each final-stage manufacturer shall affix a certification label to each vehicle, in a manner that does not obscure the labels applied by previous stage manufacturers, and that contains the following statements:

(i) Name of final-stage manufacturer, preceded by the words ''MANUFACTURED BY'' or ''MFD BY''.

(ii) Month and year in which final-stage manufacture is completed. This may be spelled out, as in ''JUNE 2000'', or expressed in numerals, as in ''6/00''. No preface is required.

(iii) ''Gross Vehicle Weight Rating'' or ''GVWR'' followed by the appropriate value in kilograms and (pounds), which shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the number of the vehicle's designated seating positions. However, for school buses the minimum occupant weight allowance shall be 120 pounds per passenger and 150 pounds for the driver.

(iv) ''GROSS AXLE WEIGHT RATING'' or ''GAWR'', followed by the appropriate value in kilograms and (pounds) for each axle, identified in order from front to rear (*e.g.*, front, first intermediate, second intermediate, rear). The ratings for any consecutive axles having identical gross axle weight ratings when equipped with tires having the same tire size designation may be stated as a single value, with the label indicating to which axles the ratings apply.

Examples of combined ratings:

(a) All axles—2,400 kg (5,290 lb) with LT245/75R16(E) tires;

(b) Front—5,215 kg (11,500 lb) with 295/75R22.5(G) tires;

(c) First intermediate to rear—9,070 kg (20,000 lb) with 295/75R22.5(G) tires.

(v)(A) One of the following alternative certification statements:

(*1*) ''This vehicle conforms to all applicable Federal Motor Vehicle Safety Standards, [and Bumper and Theft Prevention Standards, if applicable] in effect in (month, year).''

(*2*) ''This vehicle has been completed in accordance with the prior manufacturers' IVD, where applicable. This vehicle conforms to all applicable Federal Motor Vehicle Safety Standards, [and Bumper and Theft Prevention Standards, if applicable] in effect in (month, year).''

(*3*) ''This vehicle has been completed in accordance with the prior manufacturers' IVD, where applicable, except for [insert FMVSS(s)]. This vehicle conforms to all applicable Federal Motor Vehicle Safety Standards, [and Bumper and Theft Prevention Standards if applicable] in effect in (month, year).''

(B) The date shown in the statement required in paragraph (d)(2)(v)(A) of this section shall not be earlier than the manufacturing date provided by the incomplete or intermediate stage manufacturer and not later than the date of completion of the final-stage manufacture.

(C) Notwithstanding the certification statements in paragraph (d)(2)(v)(A) of this section, the legal responsibilities and liabilities for certification under the Vehicle Safety Act shall be allocated among the vehicle manufacturers as provided in 567.5(b)(1), (c)(1), and (d)(1), and 49 CFR 568.4(a)(9).

(vi) Vehicle identification number.

(vii) The type classification of the vehicle as defined in 49 CFR 571.3 (*e.g.*, truck, MPV, bus, trailer).

(e) More than one set of figures for GVWR and GAWR, and one or more tire sizes, may be listed in satisfaction of the requirements of paragraphs (d)(2)(iii) and (iv) of this section, as provided in § 567.4(h).

(f) If an incomplete vehicle manufacturer assumes legal responsibility for all duties and liabilities for certification under the Vehicle Safety Act, with respect to the vehicle as finally manufactured, the incomplete vehicle manufacturer shall ensure that a label is affixed to the final vehicle in conformity with paragraph (d) of this section, except that the name of the incomplete vehicle manufacturer shall appear instead of the name of the final-stage manufacturer after the words ''MANUFACTURED BY'' or ''MFD BY'' required by paragraph (d)(2)(i) of this section.

(g) If an intermediate manufacturer of a vehicle assumes legal responsibility for all duties and liabilities for certification under the Vehicle Safety Act, with respect to the vehicle as finally manufactured, the intermediate manufacturer shall ensure that a label is affixed to the final vehicle in conformity with paragraph (d) of this section, except that the name of the intermediate manufacturer shall appear instead of the name of the final-stage manufacturer after the words ''MANUFACTURED BY'' or ''MFD BY'' required by paragraph (f) of this section.

§ 567.6. Requirements for persons who do not alter certified vehicles or do so with readily attachable components.

A person who does not alter a motor vehicle or who alters such a vehicle only by the addition, substitution, or removal of readily attachable components such as mirrors or tires and rim assemblies, or minor finishing operations such as painting, in such a manner that the vehicle's stated weight ratings are still valid, need not affix a label to the vehicle, but shall allow a manufacturer's label that conforms to the requirements of this part to remain affixed to the vehicle. If such a person is a distributor of the motor vehicle, allowing the manufacturer's label to remain affixed to the vehicle shall satisfy the distributor's certification requirements under the Vehicle Safety Act.

§ 567.7 Requirements for persons who alter certified vehicles.

(a) With respect to the vehicle alterations it performs, an alterer:

(1) Has a duty to determine continued conformity of the altered vehicle with applicable Federal motor vehicle safety, Bumper, and Theft Prevention standards, and

(2) Assumes legal responsibility for all duties and liabilities for certification under the Vehicle Safety Act.

(b) The vehicle manufacturer's certification label and any information labels shall remain affixed to the vehicle and the alterer shall affix to the vehicle an additional label in the manner and location specified in § 567.4, in a manner that does not obscure any previously applied labels, and containing the following information:

(1) The statement: ''This vehicle was altered by (individual or corporate name) in (month and year in which alterations were completed) and as altered it conforms to all applicable Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards affected by the alteration and in effect in (month, year).'' The second date shall be no earlier than the date of manufacture of the certified vehicle (as specified on the certification label), and no later than the date alterations were completed.

(2) If the gross vehicle weight rating or any of the gross axle weight ratings of the vehicle as altered are different from those shown on the original certification label, the modified values shall be provided in the form specified in § 567.4(g)(3) and (4).

(3) If the vehicle as altered has a different type classification from that shown on the original certification label, the type as modified shall be provided.

■ 5. Part 568 is revised to read as follows:

PART 568—VEHICLES MANUFACTURED IN TWO OR MORE STAGES—ALL INCOMPLETE, INTERMEDIATE AND FINAL-STAGE MANUFACTURERS OF VEHICLES MANUFACTURED IN TWO OR MORE STAGES

Sec.

568.1 Purpose and scope.
568.2 Application.
568.3 Definitions.
568.4 Requirements for incomplete vehicle manufacturers.
568.5 Requirements for intermediate manufacturers.
568.6 Requirements for final-stage manufacturers.
568.7 Requirements for manufacturers who assume legal responsibility for a vehicle.

Authority: 49 U.S.C. 30111, 30115, 30117, 30166 delegation of authority at 49 CFR 1.50.

§ 568.1 Purpose and scope.

The purpose of this part is to prescribe the method by which manufacturers of vehicles manufactured in two or more stages shall ensure conformity of those vehicles with the Federal motor vehicle safety standards (''standards'') and other regulations issued under the National Traffic and Motor Vehicle Safety Act, as amended (49 U.S.C. § 30115) and the Motor Vehicle Information and Cost Savings Act, as amended (49 U.S.C. 32504 and 33108(c)).

§ 568.2 Application.

This part applies to incomplete vehicle manufacturers, intermediate manufacturers, and final-stage manufacturers of vehicles manufactured in two or more stages.

§ 568.3 Definitions.

All terms that are defined in the Act and the rules and standards issued under its authority are used as defined therein. The term ''bumper'' has the meaning assigned to it in Title I of the Cost Savings Act and the rules and standards issued under its authority. The definitions contained in 49 CFR Part 567 apply to this part.

§ 568.4 Requirements for incomplete vehicle manufacturers.

(a) The incomplete vehicle manufacturer shall furnish for each incomplete vehicle, at or before the time of delivery, an incomplete vehicle document (''IVD'') that contains the following statements, in the order shown, and all other information required by this part to be included therein:

(1) Name and mailing address of the incomplete vehicle manufacturer.

(2) Month and year during which the incomplete vehicle manufacturer performed its last manufacturing operation on the incomplete vehicle.

(3) Identification of the incomplete vehicle(s) to which the document applies. The identification shall be by vehicle identification number (VIN) or groups of VINs to permit a person to ascertain positively that a document applies to a particular incomplete vehicle after the document has been removed from the vehicle.

(4) Gross vehicle weight rating (GVWR) of the completed vehicle for which the incomplete vehicle is intended.

(5) Gross axle weight rating (GAWR) for each axle of the completed vehicle, listed and identified in order from front to rear (*e.g.*, front, first intermediate,

second intermediate, rear). The ratings for any consecutive axles having identical gross axle weight ratings when equipped with tires having the same tire size designation may, at the option of the incomplete vehicle manufacturer, be stated as a single value, with the label indicating to which axles the ratings apply.

Examples of combined ratings:

(a) All axles—2,400 kg (5,290 lb) with LT245/75R16(E) tires;

(b) Front—5,215 kg (11,500 lb) with 295/75R22.5(G) tires.

(c) First intermediate to rear—9,070 kg (20,000 lb) with 295/75R22.5(G) tires.

(6) Listing of the vehicle types as defined in 49 CFR 571.3 (*e.g.*, truck, MPV, bus, trailer) into which the incomplete vehicle may appropriately be manufactured.

(7) Listing, by number, of each standard, in effect at the time of manufacture of the incomplete vehicle, that applies to any of the vehicle types listed in paragraph (a)(6) of this section, followed in each case by one of the following three types of statement, as applicable:

(i) Type 1—A statement that the vehicle when completed will conform to the standard if no alterations are made in identified components of the incomplete vehicle.

Example: 104–This vehicle when completed will conform to FMVSS No. 104, Windshield Wiping and Washing Systems, if no alterations are made in the windshield wiper components.

(ii) Type 2—A statement of specific conditions of final manufacture under which the manufacturer specifies that the completed vehicle will conform to the standard.

Example: 121—This vehicle when completed will conform to FMVSS No. 121, Air Brake Systems, if it does not exceed any of the gross axle weight ratings, if the center of gravity at GVWR is not higher than nine feet above the ground, and if no alterations are made in any brake system component.

(iii) Type 3—A statement that conformity with the standard cannot be determined based upon the components supplied on the incomplete vehicle, and that the incomplete vehicle manufacturer makes no representation as to conformity with the standard.

(8) Each document shall contain a table of contents or chart summarizing all the standards applicable to the vehicle pursuant to 49 CFR 568.4(a)(7).

(9) A certification that the statements contained in the incomplete vehicle document are accurate as of the date of manufacture of the incomplete vehicle and can be used and relied on by any intermediate and/or final-stage manufacturer as a basis for certification.

(b) To the extent the IVD expressly incorporates by reference body builder or other design and engineering guidance (Reference Material), the incomplete vehicle manufacturer shall make such Reference Material readily available to subsequent manufacturers. Reference Materials incorporated by reference in the IVD shall be deemed to be part of the IVD.

(c) The IVD shall be attached to the incomplete vehicle in such a manner that it will not be inadvertently detached, or alternatively, it may be sent directly to a final-stage manufacturer, intermediate manufacturer or purchaser for purposes other than resale to whom the incomplete vehicle is delivered. The Reference Material in paragraph (b) of this section need not be attached to each vehicle.

§ 568.5 Requirements for intermediate manufacturers.

Each intermediate manufacturer of a vehicle manufactured in two or more stages shall furnish to the final-stage manufacturer the document required by 49 CFR 568.4 in the manner specified in that section. If any of the changes in the vehicle made by the intermediate manufacturer affects the validity of the statements in the IVD, that manufacturer shall furnish an addendum to the IVD that contains its name and mailing address and an indication of all changes that should be made in the IVD to reflect changes that it made to the vehicle. The addendum shall contain a certification by the intermediate manufacturer that the statements contained in the addendum are accurate as of the date of manufacture by the intermediate manufacturer and can be used and relied on by any subsequent intermediate manufacturer(s) and the final-stage manufacturer as a basis for certification.

§ 568.6 Requirements for final-stage manufacturers.

Each final-stage manufacturer shall complete the vehicle in such a manner that it conforms to the applicable standards in effect on the date selected by the final-stage manufacturer, including the date of manufacture of the incomplete vehicle, the date of final completion, or a date between those two dates. This requirement shall, however, be superseded by any conflicting provisions of a standard that applies by its terms to vehicles manufactured in two or more stages.

§ 568.7 Requirements for manufacturers who assume legal responsibility for a vehicle.

(a) If an incomplete vehicle manufacturer assumes legal responsibility for all duties and liabilities imposed on manufacturers by the National Traffic and Motor Vehicle Safety Act, as amended (49 U.S.C. chapter 301) (hereafter referred to as the Act), with respect to a vehicle as finally manufactured, the requirements of §§ 568.4, 568.5 and 568.6 do not apply to that vehicle. In such a case, the incomplete vehicle manufacturer shall ensure that a label is affixed to the final vehicle in conformity with 49 CFR 567.5(f).

(b) If an intermediate manufacturer of a vehicle assumes legal responsibility for all duties and liabilities imposed on manufacturers by the Vehicle Safety Act, with respect to the vehicle as finally manufactured, §§ 568.5 and 568.6 do not apply to that vehicle. In such a case, the intermediate manufacturer shall ensure that a label is affixed to the final vehicle in conformity with 49 CFR 567.5(g). The assumption of responsibility by an intermediate manufacturer does not, however, change the requirements for incomplete vehicle manufacturers in § 568.4.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 7. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 delegation of authority at 49 CFR 1.50.

■ 8. Section 571.8 is revised to read as follows:

§ 571.8 Effective date.

(a) *Firefighting vehicles.* Notwithstanding the effective date provisions of the motor vehicle safety standards in this part, the effective date of any standard or amendment of a standard issued after September 1, 1971, to which firefighting vehicles must conform shall be, with respect to such vehicles, either 2 years after the date on which such standard or amendment is published in the rules and regulations section of the **Federal Register**, or the effective date specified in the notice, whichever is later, except as such standard or amendment may otherwise specifically provide with respect to firefighting vehicles.

(b) *Vehicles built in two or more stages vehicles and altered vehicles.* Unless Congress directs or the agency expressly determines that this paragraph does not apply, the date for manufacturer certification of compliance with any standard, or amendment to a standard, that is issued on or after September 1, 2006 is, insofar as its application to intermediate and final-stage manufacturers and alterers is

concerned, one year after the last applicable date for manufacturer certification of compliance. Nothing in this provision shall be construed as prohibiting earlier compliance with the standard or amendment or as precluding NHTSA from extending a compliance effective date for intermediate and final-stage manufacturers and alterers by more than one year.

Issued: February 8, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–2751 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 70, No. 29
Monday, February 14, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. AO–F&V–946–3; FV03–946–01]

Irish Potatoes Grown in Washington; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Agreement and Order No. 946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amending the marketing agreement and order (order) for Irish potatoes grown in Washington, and provides producers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the State of Washington Potato Committee (Committee), which is responsible for local administration of the order. These amendments include: adding authority for container and marking regulations; requiring Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; updating order provisions pertaining to establishment of districts and apportionment of Committee membership among those districts; requiring Committee nominees to submit a written background and acceptance statement prior to selection by USDA; allowing for nominations to be held at industry meetings or events; adding authority to change the size of the Committee; and adding authority to allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve.

The USDA proposed two additional amendments: to establish tenure limitations for Committee members, and to require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order. The proposed amendments are intended to improve the operation and functioning of the marketing order program.

DATES: The referendum will be conducted from March 18 through April 8, 2005. The representative period for the purpose of the referendum is July 1, 2003 through June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945.

Small businesses may request information on this proceeding 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.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on October 6, 2003, and published in the October 10, 2003, issue of the **Federal Register** (68 FR 58638), and a Recommended Decision issued on November 19, 2004 and published in the November 26, 2004 issue of the **Federal Register** (69 FR 68819).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

The amendments are based on the record of a public hearing held November 20, 2003, in Moses Lake, Washington. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 946, regulating the handling of Irish potatoes grown in the State of Washington, hereinafter referred to as the ''order.'' The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained numerous proposals submitted by the Committee and two proposals by the Agricultural Marketing Committee (AMS).

The amendments included in this decision would: add authority to establish container and marking regulations; require Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; update provisions pertaining to districts and allocation of Committee membership among those districts; require Committee nominees to submit a written background and acceptance statement prior to selection by USDA; allow for nominations to be held at industry meetings or events; add authority to change the size of the Committee; and add authority to allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve.

The USDA proposed two additional amendments: to establish tenure limitations for Committee members, and require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order. In addition, USDA proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on November 19, 2004, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 27, 2004. No exceptions were filed.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The record evidence is that while minimal costs may occur upon implementation of some of the proposed amendments, those costs would be outweighed by the benefits expected to accrue to the Washington fresh potato industry.

The record indicates that there are about 39 fresh potato handlers currently regulated under the order. With total fresh sales valued at $108 million, on average, these handlers each received $2.8 million. In addition, there are about 160 producers of fresh potatoes in the production area. With total fresh sales at the producer level valued at $58 million, each grower's average receipts would be $362,500. Witnesses testified that about 76 percent of these producers are small businesses.

It is reasonable to conclude that a majority of the fresh Washington potato handlers and producers are small businesses.

Potato Industry Overview

Record evidence supplied by the Washington State Potato Commission indicates that there are approximately 323 potato producers in the State, of which approximately 160 (50 percent) are producers of fresh market potatoes. Approximately 76 percent of the fresh market potato producers are small entities, according to the SBA definition. Many of these farming operations also produce potatoes for the processing market. The Washington State potato industry also includes 39 handlers and 12 processing plants.

A 2001 publication of Washington State University (WSU) Extension estimated that total demand for potatoes produced in Washington State was $495 million dollars. Of this total sales value figure for Washington potato producers, fresh market potato pack-out represented approximately 12 percent, with producer sales valued at $58 million. The largest proportion of the crop ($357 million or 72 percent) was represented by sales to the frozen potato product market, principally for French fries. Other uses included seed potatoes, dehydration and potato chips.

The WSU report also explained that the supply of fresh market potatoes is handled by various potato packers (handlers) whose operations vary in size. These handlers supply the retail market, including supermarkets and grocery stores, as well as restaurants and other foodservice operations. Potatoes are prepared for the fresh market by cleaning, sorting, grading, and packaging before shipment is made to final destinations. Due to customer specifications about sizes, shapes, and blemishes, as well as the minimum quality, size, and maturity regulations of the order, about 42–43 percent of the potatoes delivered to handlers are graded out of the fresh market. Potatoes not meeting grade are generally delivered to processors for use in the frozen French fry and dehydrated potato markets. The total output of the fresh pack industry in terms of sales value is $108 million.

Washington State acreage and production is second only to that of Idaho, but its yields per acre are the highest of any State in the United States. Produced on 165,000 acres, total potato production in Washington in 2002 was 92.4 million hundredweight, with an average yield of 560 hundredweight per acre. Over the last several years, Washington has produced about 21 percent of the total U.S. potato production on about 13 percent of the total acreage dedicated to potatoes. Washington's share of the total value has been about 17 percent of the nation's total. Fresh utilization has varied between 11 percent and 15 percent from 1993 through 2002. These figures are based on data published by the USDA's National Agricultural Statistical Service (NASS).

The record indicates that soil type, climate, and number of irrigated acres combine to make Washington an excellent area to grow potatoes. In 2000, Washington produced a record crop with 105 million hundredweight grown on 175,000 acres with a total industry value of $555.2 million. This represents a substantial increase from 1949—the year in which the marketing order was established—in which producers harvested 29,000 acres with a yield of 6.4 million hundredweight of potatoes valued at $14.8 million. According to testimony, the producer price per hundredweight of potatoes was $2.30 in 1949 and $5.40 in 2002.

The Role of U.S. No. 2 Grade Potatoes in the Washington Potato Industry

Witnesses at the hearing explained that potato production is dependent on many factors over which they have little control, including water availability, weather, and pest and weed pressures. For example, the potato crop may be of higher average quality one year, yielding an increased supply of U.S. No. 1 grade potatoes, and have an overall lower quality the next year with a preponderance of U.S. No. 2 grade potatoes.

According to testimony, U.S. No. 2 grade potatoes in Washington are generally diverted for use in making dehydrated potato products. In addition, U.S. No. 2 grade potatoes are occasionally in demand as ''peelers'' for use in soups and salads, or as ''natural'' fries. Regardless of the secondary products markets, witnesses explained, the fresh, table stock market is an important additional market for U.S. No. 2 grade potatoes. Witnesses explained that the Washington potato industry cannot currently take advantage of this market without container marking authority. Having the additional flexibility to pack U.S. No. 2 grade potatoes in labeled cartons would help the industry overall.

Economic Impact of Proposal 1, Adding Container and Marking Regulatory Authority

The proposal described in Material Issue No. 1 would amend § 946.52, Issuance of regulations, to add authority for the Committee to recommend container and marking regulations to the USDA for subsequent implementation. This would be in addition to the existing authority for grade, size, quality and maturity requirements.

In testifying in support of this amendment, witnesses cited an example of how this authority could be used. They stated that the Committee wants to respond to customer demand for U.S. No. 2 grade potatoes packed in cartons, but at the same time it wants to ensure that such cartons would be properly labeled. Three people testified in favor of this proposal, and no one testified in opposition. The three witnesses covered similar themes in expressing their views on the proposal.

Each stated that the U.S. potato market is highly competitive and that the potato industry in Washington needs to be vigilant in responding to market needs so as not to lose market share to other states. Testimony indicated that the fresh market potato industry in Washington needs to ensure that their customers are receiving what they order, and must remain flexible and innovative. All three witnesses emphasized that offering appropriate packaging is a key element of being flexible and responsive to customers.

The witnesses offered an historical perspective by pointing out that 40

years ago, the industry standard for potato packaging was a 50 or 100-pound burlap bag. The passing of 30 years saw the phasing in of 50-pound cartons and polyethylene (poly) bags. Now, potatoes are shipped in burlap, cartons, poly, mesh, cardboard bulk displays and baler bags. Container sizes can range from 2 pounds to 100 pounds. It was emphasized that the industry is constantly looking for new packaging and delivery methods.

Witnesses stated that as early as 1994, the Committee began receiving requests from retailers and wholesalers to pack U.S. No. 2 grade potatoes from Washington in 50 lb. cartons. These customers cited a number of reasons for wanting the U.S. No. 2 grade potatoes in cartons, including ease of handling and stacking in warehouses, improved worker safety, and better product protection (for example, less ''greening'' from exposure to light, and reduced bruising during transport.)

Although authority exists in the order for the Committee to recommend regulations to allow packing of U.S. No. 2 grade potatoes in cartons, witnesses explained that up until now the Committee has chosen not to permit this lower grade to be packed in cartons because of the inability to mandate labeling. The current handling regulations specify that only U.S. No. 1 or better grade potatoes may be packed in cartons, and as such, buyers of Washington potatoes have learned to expect this premium grade when purchasing potatoes in cartons. Adding this labeling authority would provide assurance to customers and to the industry that the product being shipped is properly identified. Mandatory labeling prevents handlers from misrepresenting the quality of the potatoes packed in the carton. Even one handler sending substandard product to customers can mar the reputation of the Washington State potato industry, according to witnesses.

Witnesses stated that upholding the integrity of the Washington State potato industry is as important to producers as meeting customer specifications. Mandating labeling would help ensure product integrity. The Committee has discussed that without the labeling authority, a customer could potentially receive U.S. No. 2 grade potatoes from a handler, thinking that they are of U.S. No. 1 grade quality. This could damage customer perceptions of the higher-grade potatoes coming out of Washington. Labeling authority would help alleviate consumer perception problems. Further, not only would it help verify that handlers are putting the right product into the right packaging, but it also would assure customers that they are actually receiving what they have ordered.

Witnesses also emphasized the minimal additional cost of implementing this proposal. They point out that handlers' facilities are already configured for packing potatoes in cartons, and for labeling those cartons, so there is no need for any equipment changes or additions. In the witnesses' view, any additional costs a handler would have in packing potatoes in cartons rather than sacks would be offset by the increased selling price.

The USDA concurs that adding container and marking authority would be a useful market-facilitating improvement to the order. Requiring labeling of cartons would help to improve market transactions between seller and buyer by assuring all concerned as to the exact content of such cartons. Washington producers and handlers would benefit from taking advantage of another market niche, with minimal additional cost.

Testimony and industry data together indicate that little to no differential impact between small versus large producers or handlers would result from the proposed amendment to authorize container and labeling requirements. Although not easily quantifiable, the USDA concurs that benefits to the potato industry appear to substantially outweigh the potential costs associated with implementing this proposal.

Economic Impact of Remaining Amendment Proposals

Remaining amendment proposals are administrative in nature and would impose no new regulatory burdens on Washington potato producers or handlers. They should benefit the industry by improving the operation of the program and making it more responsive to industry needs.

Producer members of the Committee are currently required to be producers in the district they are nominated to represent. Adding another eligibility requirement—that they be producers of fresh potatoes—would ensure that the Committee is representative of, and responsive to, those producers the program impacts most directly. No additional costs would be incurred.

Replacing obsolete order language pertaining to establishment of districts and allocation of Committee membership among those districts would simply update the order. To the extent updating order language simplifies the program and reduces confusion, it would benefit the industry.

Currently, Committee member nominees are required to complete a Background Statement before selection by USDA, and an Acceptance Letter subsequent to selection. Combining these into a single form would streamline the appointment process and reduce reporting requirements imposed on Committee members.

Nominations of Committee members can be conducted through mail balloting or at meetings held in each of the five established districts. Allowing nominations to be made at larger, industry-wide meetings would provide the industry with an additional option. This option could result in the Committee reaching a larger audience of producers and handlers, thereby broadening industry participation and facilitating the nomination process.

The Washington Potato Committee consists of 10 producers, 5 handlers, and their alternates. Changing the size of the Committee would allow the industry to adjust to changes in fresh potato production patterns and in the number of active industry participants. An increase in Committee size could lead to marginally higher program costs because Committee members are reimbursed for expenses they incur in attending meetings and performing other duties under the order. A reduction in Committee size (deemed to be more likely according to the record) would likewise reduce program costs. Any recommendation to change the size of the Committee would be considered in terms of cost and the need to ensure appropriate representation of producers and handlers in Committee deliberations.

Committee members serve 3-year terms of office, with no limit on the number of terms they may serve. The proposed amendment to add tenure requirements, limiting persons to two consecutive three-year terms, would allow more persons the opportunity to serve as Committee members. It would provide for more diverse membership, provide new perspectives and ideas, and increase the number of individuals in the industry with Committee experience. No additional costs are expected to incur because of this proposed amendment.

The recommendation to require periodic continuance referenda to ascertain industry support for the program would allow producers the opportunity to vote on whether to continue the operation of the order. Most of the costs associated with referenda are borne by USDA. Ensuring that the program is administered in response to producer needs would outweigh these costs.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), any reporting and recordkeeping provision changes that would be generated by the proposed amendments would be submitted to the Office of Management and Budget (OMB). Current information collection requirements for Part 946 are approved by OMB under OMB number 0581–0178.

The Washington Potato Committee recommended amending producer eligibility requirements to require production of potatoes for the fresh market for 3 out of the 5 years of production prior to nomination. The Committee has also made recommendations that would streamline the nomination process and increase industry participation in nominations. In conformance with these recommendations, the confidential qualification and acceptance statement will be combined in the appointment of committee members. This form is based on the currently approved Confidential Background Statement for the Washington Potato Marketing Committee, and no change in the information collection burden or further OMB approval is necessary.

Civil Justice Reform

The amendments to Marketing Order 946 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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 the Department 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the 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 the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 26, 2004, issue of the **Federal Register** are hereby approved and adopted.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of Irish Potatoes Grown in Washington.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the annexed order amending the order regulating the handling of Irish potatoes grown in Washington is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of Irish potatoes in the production area.

The representative period for the conduct of such referendum is hereby determined to be July 1, 2003, through June 30, 2004.

The agent of the Secretary to conduct such referendum is hereby designated to be Teresa Hutchinson and Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Dated: February 8, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Irish Potatoes Grown in Washington [1]

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 946 (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of Irish potatoes grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of Irish potatoes grown in the production area; and

(5) All handling of Irish potatoes grown in the production area as defined

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of Irish potatoes grown in Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on November 19, 2004, and published in the **Federal Register** on November 26, 2004, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Add a new § 946.17 to read as follows:

§ 946.17 Pack.

Pack means a quantity of potatoes in any type of container and which falls within the specific weight limits or within specific grade and/or size limits, or any combination thereof, recommended by the committee and approved by the Secretary.

3. Add a new § 946.18 to read as follows:

§ 946.18 Container.

Container means a sack, box, bag, crate, hamper, basket, carton, package, barrel, or any other type of receptacle used in the packing, transportation, sale or other handling of potatoes.

4. In § 946.22, designate the current text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 946.22 Establishment and membership.

* * * * *

(b) The Secretary, upon recommendation of the committee, may reestablish districts, may reapportion members among districts, may change the number of members and alternate members, and may change the composition by changing the ratio of members, including their alternates. In recommending any such changes, the following shall be considered:

(1) Shifts in acreage within districts and within the production area during recent years;

(2) The importance of new production in its relation to existing districts;

(3) The equitable relationship between committee apportionment and districts; and,

(4) Other relevant factors.

5. In § 946.23, designate the current text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 946.23 Alternate members.

* * * * *

(b) In the event that both a member and his or her alternate are unable to attend a Committee meeting, the member, the alternate member, or the Committee members present, in that order, may designate another alternate of the same classification (handler or producer) to serve in such member's place and stead.

6. Section 946.24 is revised to read as follows:

A. Revising paragraph (a).

B. Redesignating paragraph (b) as paragraph (c).

C. Adding a new paragraph (b).

The revisions read as follows:

§ 946.24 Procedure.

(a) Sixty percent of the committee members shall constitute a quorum and a concurring vote of 60 percent of the committee members will be required to pass any motion or approve any committee action.

(b) The quorum and voting requirements of paragraph (a) of this section shall not apply to the designation of temporary alternates as provided in § 946.23.

(c) The committee may provide for meetings by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: Provided, That if any assembled meeting is held, all votes shall be cast in person.

7. Section 946.25 is amended by:

A. Revising paragraph (a).

B. Revising paragraph (c).

The revisions read as follows:

§ 946.25 Selection.

(a) Persons selected as committee members or alternates to represent producers shall be individuals who are producers of fresh potatoes in the respective district for which selected, or officers or employees of a corporate producer in such district. Such individuals must also have produced potatoes for the fresh market for at least three out of the five years prior to nomination.

(b) * * *

(c) The Secretary shall select committee membership so that, during each fiscal period, each district, as designated in § 946.31, will be represented as follows:

(1) District No. 1—Three producer members and one handler member;

(2) District No. 2—Two producer members and one handler member;

(3) District No. 3—Two producer members and one handler member;

(4) District No. 4—Two producer members and one handler member;

(5) District No. 5—One producer member and one handler member.

8. Revise § 946.26 to read as follows:

§ 946.26 Acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by USDA, qualify by filing a written background and acceptance statement indicating such person's willingness to serve in the position for which nominated.

9. Amend § 946.27 by revising paragraph (a) to read as follows:

§ 946.27 Term of office.

(a) The term of office of each member and alternate member of the committee shall be for 3 years beginning July 1 and continuing until their successors are selected and have qualified. The terms of office of members and alternates shall be determined so that about one-third of the total committee membership is selected each year. Committee members shall not serve more than 2 consecutive terms. Members who have served for 2 consecutive terms will be ineligible to serve as a member for 1 year.

* * * * *

10. Revise § 946.31 to read as follows:

§ 946.31 Districts.

For the purpose of determining the basis for selecting committee members, the following districts of the production area are hereby established:

(a) District No. 1—The counties of Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln, plus the East Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in either the Quincy or South Irrigation Districts which lies east of township vertical line R27E, plus the area of Adams County not included in either of the South or Quincy Irrigation Districts.

(b) District No. 2—The counties of Kittitas, Douglas, Chelan, and Okanogan, plus the Quincy Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in the East or South Irrigation Districts which lies west of township line R28E.

(c) District No. 3—The counties of Benton, Klickitat, and Yakima.

(d) District No. 4—The counties of Walla Walla, Columbia, Garfield, and Asotin, plus the South Irrigation District of the Columbia Basin Project, plus the area of Franklin County not included in the South District.

(e) District No. 5—All of the remaining counties in the State of Washington not included in Districts No. 1, 2, 3, and 4 of this section.

11. Amend § 946.32 by revising paragraph (a) to read as follows:

§ 946.32 Nomination.

* * * * *

(a) Nominations for Committee members and alternate members shall be made at a meeting or meetings of producers held by the Committee or at other industry meetings or events not later than May 1 of each year; or the Committee may conduct nominations by mail not later than May 1 of each year in a manner recommended by the Committee and approved by the Secretary.

* * * * *

12. Amend § 946.52 by adding a new paragraph (a)(5) to read as follows:

§ 946.52 Issuance of regulations.

(a) * * *

(5) To regulate the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in the packing or handling of potatoes, or both.

* * * * *

13. In § 946.63, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 946.63 Termination.

* * * * *

(d) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether producers favor continuance of this part.

* * * * *

[FR Doc. 05–2743 Filed 2–11–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–02–200]

Alternative Fuel Transportation Program; Fischer-Tropsch Diesel Fuels

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; notice of availability of status review.

SUMMARY: This document announces the availability of a Department of Energy (DOE) document concerning diesel fuel made from natural gas using the Fischer-Tropsch process which is being added to docket number EE–RM–02–200. The document is the DOE's status review of its evaluation of Fischer-Tropsch diesel (FTD) under the Energy Policy Act of 1992 (EPAct), undertaken partly in response to three petitions received by DOE requesting rulemakings to designate FTD fuels as alternative fuels. For the reasons identified in the status review document, DOE currently is unable to make the necessary finding that FTD fuel meets the ''yields substantial environmental benefits'' criterion under section 301(2) and is not undertaking a rulemaking at this time. DOE will keep the rulemaking docket open indefinitely and will periodically review any new submissions received.

ADDRESSES: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of FreedomCAR and Vehicle Technologies, EE–2G, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

The docket material has been filed under ''EE–RM–02–200.'' This docket will remain open indefinitely. Copies of the status review, workshop transcript, discussion paper, and related DOE laboratory analyses, petitions, and any public comments can be found at the Web site address *http://www.eere.energy.gov/vehiclesandfuels/epact/petition/ftd_docket_index.shtml.* You may also access this document using a computer in DOE's Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. To request a copy of any of these documents or to arrange on-site access to paper copies or other information in the docket at the Office of FreedomCAR and Vehicle Technologies, contact Linda Bluestein at the phone number or e-mail address below.

FOR FURTHER INFORMATION CONTACT: Linda Bluestein on (202) 586–9171 or *linda.bluestein@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

a. Statutory Authority

Under titles III through V of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13211 *et seq.*), DOE is authorized to implement alternative fuel fleet programs covering certain fleets. As part of this responsibility, the Department is also tasked with determining whether fuels may be added to the statutory list of alternative fuels for which vehicles may be acquired under these fleet programs. As it was enacted in 1992, EPAct defined ''alternative fuel'' as follows:

> [T]he term ''alternative fuel'' means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements related to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and *any other fuel the Secretary determines, by rule, is substantially not petroleum, and would yield substantial energy security benefits and substantial environmental benefits.* Pub. L. 102–486, section 301(2), (emphasis added).

The emphasized portion of that definition states the minimum procedural and substantive requirements for adding a new fuel to the list of fuels enumerated or implicitly covered by the provisions of section 301(2). Subsequently, (in Pub. L. 106–554), section 301(2) of EPAct was amended by inserting, ''including liquid fuels domestically produced from natural gas'' after ''natural gas.'' (**Note:** By rule, effective June 16, 1999, DOE added three specific blends of methyltetrahydrofuran, ethanol, and hydrocarbons known as ''P-series'' fuels to the regulatory definition of alternative fuel, 64 FR 26822, May 17, 1999. In addition, the Department had earlier specifically identified 100 percent (''neat'') biodiesel as qualifying under ''fuels (other than alcohol) derived from biological materials'' within the Alternative Fuel Transportation Program (Program), 61 FR 10621, March 14, 1996.)

b. Previous Actions Concerning Designation of Fischer-Tropsch Diesel Fuel as an Alternative Fuel

DOE has received three petitions, requesting a rulemaking to determine whether certain Fischer-Tropsch diesel (FTD) fuels should be considered alternative fuel under the program regulations (10 CFR part 490). These petitions were submitted by Mossgas (PTY) Limited (now PetroSA), Syntroleum Corporation, and Rentech, Inc. FTD fuels are diesel fuels made from natural gas or other carbon-bearing

feedstocks using the Fischer-Tropsch process. The three petitioners proposed that their FTD fuels be designated as ''alternative fuels'' because the fuels conform to the EPAct requirement (in title III, section 301(2)) of being substantially not petroleum and yielding substantial energy security and environmental benefits. In September of 2002, the Department announced a public workshop and opportunity for public comment on FTD fuels, 67 FR 57347, September 10, 2002.

On October 16, 2002, the Department's Office of FreedomCAR and Vehicle Technologies Program held a public workshop to discuss the benefits and detriments of designating natural gas-based non-domestic FTD as an alternative fuel under the program. The Department made available an initial analytical paper for public comment on this topic. A transcript from the workshop is available in the docket. Four organizations presented prepared statements at the workshop, including the three petitioners. Eleven sets of written comments were also received from other organizations. All of the statements and comments can also be found in the docket.

II. Department of Energy's Determination

After a technical review of relevant data and information, including data and information collected after and during the workshop, the Department prepared a status review of its evaluation of the issues surrounding designation of FTD as an alternative fuel. In today's document, the Department is announcing availability of that document. As stated in the status review document:

''After collecting and evaluating pertinent data and conducting a workshop, DOE is unable to make a finding at this time that FTD yields ''substantial environmental benefits'' within the meaning of section 301(2) of the Energy Policy Act. A finding that a candidate fuel offers ''substantial environmental benefits'' is a necessary finding to designate a fuel as an alternative fuel under section 301(2). DOE will keep its FTD rulemaking docket active so that stakeholders desiring to submit new data and information relevant to FTD may do so. DOE will evaluate the data periodically to make future decisions with regard to FTD designation as an alternative fuel'' (footnote omitted).

The Department believes that FTD offers a combination of potential environmental benefits and detriments. Data are currently unavailable or inadequate on a number of FTD-related environmental issues. For example, the Department's analysis shows that FTD would most likely increase greenhouse gas emissions, but is unclear as to how much the likely increase would be. On the other hand, DOE continues to believe that FTD is likely to reduce emissions of particulate matter and nitrous oxides in pre-model year 2007 engines, particularly in pre-model year 1998 engines, but the existing data do not provide for reliable quantification of those emission reductions. With respect to fuels that result in any significant potential environmental detriment, it is very difficult to make designations based on judgments that other environmental benefits outweigh the significant potential detriments. At the current time, the Department is unable to find that FTD is likely to yield net environmental benefits, and does not plan to initiate a rulemaking concerning whether FTD fuels should be considered ''alternative fuels'' under EPAct section 301(2). Any interested party, however, is invited to submit comments, data or information to DOE on this issue and, if warranted at some future time, DOE may take further action on this issue.

Issued in Washington, DC, on January 28, 2005.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 05–2779 Filed 2–11–05; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19959; Directorate Identifier 2004–CE–46–AD]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Model DG–500MB Sailplanes and Glaser-Dirks Flugzeugbau GmbH Model DG–800B Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all DG Flugzeugbau GmbH Model DG–500MB sailplanes equipped with a Solo engine and Glaser-Dirks Flugzeugbau GmbH Model DG–800B sailplanes equipped with a Solo engine. This proposed AD would require you to inspect the propeller for damage, specifically foam core separation, and replace any damaged propeller. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to detect and correct damage to the propeller, which could result in failure of the propeller to perform properly. This failure could lead to reduced or loss of control of the sailplane.

DATES: We must receive any comments on this proposed AD by March 31, 2005.

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

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

To get the service information identified in this proposed AD, contact DG Flugzeugbau, Postbox 41 20, 76625 Bruchsal, Germany; telephone, 49 7257 890; fax, 49 7257 8922.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2004–19959.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, ACE–112, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2004–19959; Directorate Identifier 2004–CE–46–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is

docket number FAA–2004–19959. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

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

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all DG Flugzeugbau GmbH Model DG–500MB sailplanes equipped with a Solo engine and all Glaser-Dirks Flugzeugbau GmbH Model DG–800B sailplanes equipped with a Solo engine. The LBA reports that a damaged propeller was found on a Model DG–800B sailplane.

The foam core inside the propeller separated and caused one blade to be thicker than the other. The propeller became overheated after the engine was retracted. This was possibly due to limited ventilation. The LBA reports three occurrences of this condition.

The propeller on Model DG–500MB sailplanes equipped with a Solo engine is of a similar design to Model DG–800B sailplanes equipped with a Solo engine.

What is the potential impact if FAA took no action? If not detected and corrected, damage to the propeller, specifically foam core separation, could cause the propeller to fail to perform properly. This failure could lead to reduced or loss of control of the sailplane.

Is there service information that applies to this subject? DG Flugzeugbau GmbH has issued Technical Note No. 843/19 (LBA approved on April 7, 2004; EASA approved on April 26, 2004); and Technical Note 873/29 (LBA approved on April 7, 2004; EASA approved April 26, 2004).

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

—Inspecting the propeller for damage; and

—Replacing any damaged propeller found.

What action did the LBA take? The LBA classified these technical notes as mandatory and issued German AD Number D–2004–195 and AD Number D–2004–196, both dated April 23, 2004, to ensure the continued airworthiness of these sailplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These DG Flugzeugbau GmbH Model DG–500MB sailplanes and Glaser-Dirks Flugzeugbau GmbH Model DG–800B sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, 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.

Since the unsafe condition described previously is likely to exist or develop on other DG Flugzeugbau GmbH Model DG–500MB sailplanes and other Glaser-Dirks Flugzeugbau GmbH Model DG–800B sailplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct damage to the propeller, which could result in failure of the propeller to operate properly. This failure could lead to reduced or loss of control of the sailplane.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service information.

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

Costs of Compliance

How many sailplanes would this proposed AD impact? We estimate that this proposed AD affects 31 sailplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
1 work hour × $65 per hour = $65	Not applicable	$65	$65 × 31 = $2,015.

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

Labor cost	Parts cost	Total cost per sailplane
1 work hour × $65 per hour = $65	$4,000	$4,065.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2004–19959; Directorate Identifier 2004–CE–46–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

DG Flugzeugbau GMBH and Glaser-Dirks Flugzeugbau GMBH: Docket No. FAA–2004–19959; Directorate Identifier 2004–CE–46–AD

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

(a) We must receive comments on this proposed airworthiness directive (AD) by March 31, 2005.

What Other ADs Are Affected By This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects all Model DG–500MB and DG–800B sailplanes that are:

(1) certificated in any category; and

(2) equipped with a Solo engine

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to detect and correct damage to the propeller, which could result in failure of the propeller to perform properly. This failure could lead to reduced or loss of control of the sailplane.

What Must I do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the propeller for any signs of damage	Within 25 hours time-in-service (TIS) after the effective date of AD.	Follow DG Flugzeugbau Technical Note No. 843/19 (LBA this AD. approved on April 7, 2004; EASA approved on April 26, 2004); and DG Flugzeugbau Technical Note 873/29 (LBA approved on April 7, 2004; EASA approved April 26, 2004), as applicable.
(2) If any damage is found during the inspection required in paragraph (e)(1) of this AD, replace the propeller.	Before further flight after the inspection required in paragraph (e)(1) of this AD.	Follow DG Flugzeugbau Technical Note No. 843/19 (LBA paragraph (e)(1) approved on April 7, 2004; EASA approved on April 26, 2004); and DG Flugzeugbau Technical Note 873/29 (LBA approved on April 7, 2004; EASA approved April 26, 2004), as applicable.
(3) Insert the following language in the LImitations Section of the AFM: ''Caution: With high temperatures (temperature on ground above 25°C/77°F) there is the risk of authorized by overheating the propeller after engine retraction. To avoid damage extend the engine again via manual switch (approx. 1 second) to open the engine doors, retract again 5 minutes''	Within 25 hours TIS after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the flight manual changes requirement of this AD. Make an entry in the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

Note: For Model DG–500MB sailplanes, FAA recommends you install a polyurethane shock absorber at the retaining cable mounting in the fuselage. This is specified in DG Flugzeugbau Technical Note No. 843/19 (LBA approved on April 7, 2004; EASA approved on April 26, 2004). The approximate cost to install the shock

absorber is $520 (4 work hours × $65 per hour for labor = $260 + $260 for parts).

Starting with serial number 5E243B20 and on, this shock absorber is being installed at production.

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 Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, ACE–112, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D–2004–195 and AD Number D–2004–196, both dated April 23, 2004, also address the subject of this AD.

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

(h) To get copies of the documents referenced in this AD, contact DG Flugzeugbau, Postbox 41 20, 76625 Bruchsal, Germany; telephone, 49 7257 890; fax, 49 7257 8922. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2004–19959.

Issued in Kansas City, Missouri, on February 7, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2765 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20364; Directorate Identifier 2004–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747 airplanes. This proposed AD would require repetitive inspections of the dual side braces (DSBs), underwing midspar fittings, and associated parts; other specified actions; and corrective actions if necessary. This proposed AD also provides an optional terminating action for the inspections and other specified actions. This proposed AD is prompted by reports of corroded, migrated, and rotated bearings for the DSBs in the inboard and outboard struts, a report of a fractured retainer for the eccentric bushing for one of the side links of a DSB, and reports of wear and damage to the underwing midspar fitting on the outboard strut. We are proposing this AD to prevent the loss of a DSB or underwing midspar fitting load path, which could result in the transfer of loads and motion to other areas of a strut, and possible separation of a strut and engine from the airplane during flight.

DATES: We must receive comments on this proposed AD by March 31, 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 in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20364; the directorate identifier for this docket is 2004–NM–186–AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20364; Directorate Identifier 2004–NM–186–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 on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received reports of corroded, migrated, and rotated bearings for the dual side braces (DSBs) in the inboard and outboard struts, a report of a fractured retainer for the eccentric bushing for one of the side links of a DSB, and reports of wear and damage to the underwing midspar fitting on the outboard strut on Boeing Model 747–400 and Model 747SP series airplanes. These conditions, if not corrected, could result in the loss of the DSB or underwing midspar fitting load path, which could result in the transfer of loads and motion to other areas of a

strut, and possible separation of a strut and engine from the airplane during flight.

The subject area on certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400D, 747–400F, and 747SR series airplanes is of a similar type design to those on the affected Model 747–400 and 747SP series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–54A2218, dated June 17, 2004. The service bulletin describes procedures for repetitive inspections of the DSBs, underwing midspar fittings, and associated parts; other specified actions; and corrective actions if necessary. This proposed AD also provides an optional terminating action for the repetitive actions.

The service bulletin specifies that the initial inspections of the DSBs and of the underwing midspar fitting be done within 24 months after the release date of the service bulletin. The service bulletin also specifies that the initial corrosion removal and re-lubrication of the DSB bearings be done within 72 months after the release date of the service bulletin (unless directed by the findings of the initial inspections of the DSBs to be done earlier). The service bulletin specifies that repetitive intervals range between 24 months and 72 months for the aforementioned actions. The service bulletin also specifies that the corrective actions be done before further flight or within 24 months of finding certain conditions.

The service bulletin specifies that the following actions for the inboard and outboard struts are applicable to Groups 1–3 airplanes, and that only the actions for the inboard struts are applicable to Group 4 airplanes:

Part 1—Dual Side Brace Inspections

The service bulletin describes the following DSB inspections:

- Do a detailed inspection of the bearing spherical ball for corrosion, corrosion pitting, and corrosion products.
- Do a detailed inspection for migration and rotation of the bearing outer race.
- Do a detailed inspection for cracks or fracture of the eccentric bushing retainer.

The service bulletin specifies that if no discrepancies are found during the inspections, either repeat Part 1 and Part 4, or do Part 4 and Part 3 (terminating action).

The service bulletin specifies that if any discrepancies are found during the inspections, the corrective actions include doing Part 4 and Part 2; or doing Part 4 and Part 3 (terminating action); as applicable.

The service bulletin also specifies that Part 2 may be done instead of Part 1.

Part 2—Bearing Corrosion Removal and Re-Lubrication

The service bulletin describes the following inspections and rework of the DSB bearings and associated parts, and other specified actions.

- Do a detailed inspection of the bearing for migration and rotation.
- Do a detailed inspection for cracks or fracture of the swaged lips.
- Do a detailed inspection for cracks or fracture of the eccentric bushing retainer.
- Do a detailed inspection of the eccentric bushing for damage.
- Do a detailed inspection of the bushing and fuse pin for damage.
- Do a detailed inspection of the bolt for damage.
- The other specified actions include determining if the amount of play in the bearing exceeds specified limits, determining if corrosion exceeds specified limits, and removing corrosion, as applicable; and lubricating the spherical ball and inside of the outer race.

The service bulletin specifies that if no discrepancies are found during the actions specified in Part 2: Either repeat both Part 1 and Part 4, and Part 4 and Part 2; or do Part 4 and Part 3 (terminating action).

The service bulletin specifies that if any discrepancies are found during the actions specified in Part 2, the corrective actions include repeating both Part 1 and Part 4, and Part 4 and Part 2; or doing Part 4 and Part 3 (terminating action); as applicable. The corrective actions also include replacing any damaged bushings/eccentric bushings/fuse pins/bolts with new or serviceable bushings/eccentric bushings/fuse pins/bolts; and contacting Boeing for additional instructions.

Part 3—Dual Side Brace Bearing Replacement and Side Link Modification

The service bulletin describes procedures for replacing the strut and wing side DSB bearings with new or serviceable strut and wing side bearings (includes, for Groups 3 and 4, installing cups per Part 7), modifying side links, and doing related investigative and corrective actions.

Related investigative actions include the following inspections:

- Detailed inspection of the fuse pin for damage.
- Detailed inspection for damage of the strut fitting lug bore and chamfers.
- Fluorescent penetrant inspection (FPI) or high frequency eddy current inspection for cracks of the strut fitting lug bore and chamfers.
- Detailed inspection for cracking of the swaged lip of the bearing.
- FPI of the eccentric bushing bore in the link for cracks, corrosion, and damage.
- Detailed inspection of the bushing for damage.

Corrective actions include replacing any damaged fuse pin with a new or serviceable fuse pin; contacting Boeing for additional instructions; oversizing the lug bore; and replacing any damaged bearing with a new or serviceable bearing.

Part 4—Underwing Midspar Fitting Inspection

The service bulletin describes an inspection to determine the gap between the underwing midspar fitting and strut midspar fitting.

The service bulletin specifies that if the gap is within limits specified in the service bulletin no further action is required.

The service bulletin specifies that if the gap is not within limits specified in the service bulletin, the corrective action includes doing Part 4 and Part 3 (terminating action) or doing Part 3, Part 5, and Part 6 (terminating action), as applicable.

Part 5—Underwing Midspar Fitting Inspection and Rework

The service bulletin describes procedures to do a detailed inspection of the underwing midspar fitting lugs, strut spring beam lugs and bushings, and strut fitting lugs for damage, and corrective action if necessary.

The corrective action includes reworking the underwing midspar fitting, spring beams, and strut fitting; and contacting Boeing for additional instructions.

Part 6—Dual Side Brace Fitting and Underwing Midspar Fitting Tension Bolt Inspection

The service bulletin describes procedures to do a detailed inspection of the dual side brace fitting and underwing fittings for missing or fractured tension bolts or for broken sealant around the fasteners; and do a detailed inspection of the visible areas of the underwing fitting lugs and strut fitting lugs or spring beam lugs for damage; and corrective action if necessary. The corrective action is

repairing any damage and contacting Boeing for additional instructions.

Part 7—Vapor Seal Web Cup Installation

The service bulletin describes procedures for Groups 3 and 4 to install cups for the vapor seal web.

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

FAA's Determination and Requirements of the Proposed AD

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

The FAA is not proposing to mandate the optional terminating action for several reasons:

1. Accessing the areas for inspection at the intervals is easily accomplished.

2. The inspection items are easily performed by means of a detailed inspection.

3. Long-term continued operational safety in this case will be adequately ensured by repetitive inspections to prevent the loss of a DSB or underwing midspar fitting load path.

Differences Between the Proposed AD and the Service Bulletin

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the FAA to make those findings.

Costs of Compliance

There are about 1,091 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Part 1 Inspections, per inspection cycle.	8	$65	None	$520	229	$119,080, per inspection cycle.
Part 2 Inspections, per inspection cycle.	48	65	None	3,120	229	714,480, per inspection cycle.
Part 4 Inspections, per inspection cycle.	4	65	None	260	229	59,540, per inspection cycle.

Authority for this Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–20364; Directorate Identifier 2004–NM–186–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by March 31, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B,

747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–54A2218, dated June 17, 2004.

Unsafe Condition

(d) This AD was prompted by reports of corroded, migrated, and rotated bearings for the dual side braces (DSB) in the inboard and outboard struts, a report of a fractured retainer for the eccentric bushing for one of the side links of a DSB, and reports of wear and damage to the underwing midspar fitting on the outboard strut. We are issuing this AD to prevent the loss of a DSB or underwing midspar fitting load path, which could result in the transfer of loads and motion to other areas of a strut, and possible separation of a strut and engine from the airplane during flight.

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.

Inspections and Corrective Action

(f) At the times specified in Figure 1 of Boeing Alert Service Bulletin 747–54A2218, dated June 17, 2004, except as provided by paragraph (g) of this AD: Do the various inspections and other specified actions in the figure to detect discrepancies of the dual side braces, underwing midspar fittings, and associated parts, by doing all of the actions specified in Parts 1, 2, and 4; and the applicable corrective actions specified in Parts 3, 5, 6, and 7; of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (h) of this AD. Repeat the inspections and other specified actions thereafter at the intervals specified in Figure 1 of the service bulletin. Accomplishment of any terminating action specified in Figure 1 of the service bulletin terminates the inspections and other specified actions.

(g) Where Boeing Alert Service Bulletin 747–54A2218, dated June 17, 2004, recommends an initial compliance threshold of ''within 24 months after the original issue date on this service bulletin'' for Parts 1 and 4 of the service bulletin, and of ''within 72 months after the original issue date on this service bulletin'' for Part 2 of the service bulletin, this AD requires an initial compliance threshold of ''within 24 months after the effective date of this AD'' for Parts 1 and 4 of the service bulletin and of ''within 72 months after the effective date of this AD'' for Part 2 of the service bulletin.

(h) If any damage or crack is found during any inspection or corrective action required by this AD, before further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2218, dated June 17, 2004; except, where the service bulletin specifies to contact Boeing, 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 refer to this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on February 7, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2762 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–262P]

21 CFR Part 1308

Schedules of Controlled Substances: Placement of Zopiclone Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance zopiclone, including its salts, isomers and salts of isomers into Schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized, this action will impose the regulatory controls and criminal sanctions of Schedule IV on those who handle zopiclone and products containing zopiclone.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before March 16, 2005.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–262P'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to Deputy Administrator, Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept electronic comments containing MS Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

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

SUPPLEMENTARY INFORMATION: Zopiclone is a central nervous system depressant drug. On December 15, 2004, the Food and Drug Administration (FDA) approved (S)-zopiclone (or eszopiclone), the active (S) isomer of zopiclone, for marketing under the trade name Lunesta™. Eszopiclone will be marketed as a prescription drug product for the short-term treatment of insomnia.

Racemic (R, S) zopiclone, commonly known as zopiclone, is a pyrrolopyrazine derivative of the cyclopyrrolone class and is a mixture composed of equal proportions of two optical isomers identified as (S)-zopiclone (or eszopiclone) and (R)-zopiclone. Its chemical name is 1-piperazinecarboxylic, 4-methyl-, (5RS)-6-(5-chloro-2-pyridinyl)-6,7-dihydro-7-oxo-5H-pyrrolo [3,4-b]pyrazin-5yl ester (CAS number 43200–80–2). Eszopiclone is the most active component of the racemic (R,S) zopiclone.

Zopiclone and its (S) and (R) forms of optical isomers share with benzodiazepines (*e.g.* diazepam) substantial similarities in their pharmacological properties such as anxiolytic, sedative and hypnotic actions. In controlled clinical studies, zopiclone has been found to be superior to placebo on subjective measures of sleep latency and total sleep time. In

healthy human subjects, eszopiclone is rapidly absorbed with a time to peak concentration (t_{max}) of approximately 1 hour following oral ingestion (1–7.5 mg) and has an elimination half-life (t½) of approximately 6 hours.

In clinical trials, eszopiclone shows an adverse event profile comparable to that of other hypnotics. Some adverse effects of eszopiclone include hallucinations, amnesia, difficulty concentrating, memory impairment, depression, somnolence and accidental injury.

The abuse potential of zopiclone and its optical isomers is similar to those of the benzodiazepines and the nonbenzodiazepine hypnotics, zaleplon and zolpidem, that are all currently listed in Schedule IV of the CSA. It produces euphoria, alterations in mood, perception, memory and subjective effects in humans typical of other benzodiazepines with abuse potential in Schedule IV. Zopiclone is positively reinforcing in monkeys. Zopiclone generalizes to the discriminative stimulus effects of zolpidem and benzodiazepines such as diazepam, chlordiazepoxide, and midazolam in animals. Conversely, benzodiazepines, namely diazepam, nitrazepam and alprazolam, generalize to stimulus effects of zopiclone in animals.

Case reports of dependence and withdrawal effects to zopiclone have been published in the scientific literature. Some symptoms of zopiclone withdrawal include insomnia, anxiety, tremors, palpitations, and craving. Clinical trials indicate that withdrawal effects from eszopiclone are similar to those of benzodiazepines.

From 1995 to 2004, there was one zopiclone encounter by Federal law enforcement. It involved a seizure of four tablets contained in a square foil blister pack in the State of Washington in 2000.

On January 18, 2005, the Acting Assistant Secretary for Health, DHHS, sent the Deputy Administrator of DEA scientific and medical evaluation and a letter recommending that zopiclone and its isomers be placed into Schedule IV of the CSA. Enclosed with the January 18, 2005, letter was a document prepared by the FDA entitled, ''Basis for the Recommendation for Control of Zopiclone and its Optical Isomers in Schedule IV of the Controlled Substances Act (CSA).'' The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

The correspondence from the Acting Assistant Secretary for Health to DEA dated January 18, 2005, confirmed that FDA approved the New Drug Application (NDA) for eszopiclone and issued an approval letter to the NDA sponsor on December 15, 2004.

The factors considered by the Acting Assistant Secretary of Health and DEA with respect to zopiclone were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter. (21 U.S.C. 811(c))

Based on the recommendation of the Acting Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Based on information now available, zopiclone has a low potential for abuse relative to the drugs or other substances in Schedule III;

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

(3) Abuse of zopiclone may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III. (21 U.S.C. 812(b)(4))

Based on these findings, the Deputy Administrator of DEA concludes that zopiclone, including its salts, isomers, and salts of isomers, warrants control in Schedule IV of the CSA.

Interested persons are invited to submit their comments, objections or requests for a hearing with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. In the event that comments, objections, or requests for a hearing raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Requirements for Handling Zopiclone

If this rule is finalized as proposed, zopiclone would be subject to Controlled Substances Act regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule IV controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with zopiclone, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with zopiclone, must be registered to conduct such activities in accordance with part 1301 of Title 21 of the Code of Federal Regulations.

Security. Zopiclone would be subject to Schedule III–V security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

Labeling and Packaging. All labels and labeling for commercial containers of zopiclone which are distributed after finalization of this rule shall comply with requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of zopiclone would be required to keep an inventory of all stocks of zopiclone on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in Schedule IV for zopiclone would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants are required to keep records pursuant to §§ 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23 of Title 21 of the Code of Federal Regulations.

Prescriptions. All prescriptions for zopiclone or prescriptions for products containing zopiclone would be required to be issued pursuant to 21 CFR 1306.03–1306.06 and 1306.21–1306.27. All prescriptions for zopiclone or products containing zopiclone issued after publication of the Final Rule, if authorized for refilling, would be limited to five refills.

Importation and Exportation. All importation and exportation of

zopiclone must be in compliance with part 1312 of Title 21 of the Code of Federal Regulations.

Criminal Liability. Any activity with zopiclone not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after finalization of this proposed rule would be unlawful.

Regulatory Certifications

Executive Order 12866

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

Regulatory Flexibility Act

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

Executive Order 12988

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

Executive Order 13132

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

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1995

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

List of Subjects in 21 CFR Part 1308

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

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

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES [AMENDED]

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

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

2. Section 1308.14 is proposed to be amended by adding a new paragraph (c)(51) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(51) Zopiclone	2784

* * * * *

Dated: February 9, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–2884 Filed 2–11–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AD09

Oil and Gas and Sulphur Operations on the Outer Continental Shelf (OCS)—Suspension of Operations (SOO's) for Ultra-Deep Drilling

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS proposes to modify its regulations at 30 CFR 250.175, which govern SOO's for oil and gas leases on the OCS. The proposed revision will allow MMS to grant SOO's to lessees or operators who plan to drill ultra-deep wells. MMS proposes this revision because of the added complexity and costs associated with planning and drilling an ultra-deep well. MMS expects that this revision will lead to increased drilling of ultra-deep wells and increased domestic production.

DATES: MMS will consider all comments received by March 16, 2005. MMS may not fully consider comments received after March 16, 2005.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods listed below. Please use the RIN 1010–AD09 as an identifier in your message. *See also* Public Comment Policy under Procedural Matters.

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov.* Follow the instructions on the Web site for submitting comments.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Use the RIN in the subject line.
- *Fax:* 703–787–1093. Identify with RIN.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Oil and Gas and Sulphur Operations on the Outer Continental Shelf (OCS)—Suspension of Operations (SOO's) for Ultra-deep Drilling— AD09'' in your comments.

You may also send comments on the information collection aspects of this rule directly to the Office of

Management and Budget (OMB) via: OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); mail or hand carry to the Office of Information and Regulatory Affairs, OMB Attention: Desk Officer for the Department of the Interior (1010–AD09) or by fax (202) 395–6566. Please also send a copy to MMS.

FOR FURTHER INFORMATION CONTACT: Amy C. White, Regulations and Standards Branch at (703) 787–1665.

SUPPLEMENTARY INFORMATION:

Background

When an oil and gas lease is issued on the OCS, the lessee has flexibility to schedule activities during the primary term. At the end of the primary term, the lease can continue in force only by production, suspension, drilling, or well-reworking operations as approved by the Regional Supervisor. MMS regulations at 30 CFR 250.172, 250.173, and 250.175 authorize SOO's before the discovery of oil or gas only in limited circumstances.

Generally, when a lease reaches the end of the primary term, the lessee must be producing or conducting other leaseholding operations to extend the lease beyond its primary term. When leaseholding operations are not maintaining the lease at the end of the primary term, the operator may request a Suspension of Production (SOP) if oil or gas was discovered, and if there is a commitment to proceed to development and production.

Most leases have a primary term of 5 years, although a longer period (10 years) is provided in deep water. Some leases in intermediate depths have primary terms of 8 years, with a requirement to drill an initial well in the first 5 years. Under most circumstances, the primary lease term provides sufficient time to acquire and interpret geophysical information needed to determine the presence of oil or natural gas, drill a well, and for the operator to determine whether or not to continue with development and production. However, there are cases when a company recognizes that there is a potential hydrocarbon reservoir below 25,000 feet true vertical depth subsea (TVD SS). The high cost of drilling a well to such depths warrants completing additional data analysis before drilling.

In 2002, MMS amended the rules at 30 CFR 250.175 (67 FR 44357, July 2, 2002) to provide for an SOO if additional time is needed to allow a lessee to analyze areas beneath or adjacent to salt sheets. MMS adopted this provision in the belief that when a lessee conducts significant work, additional time may be warranted to allow the lessee to benefit from the work conducted. Lessees used the change to expand their exploration in deep areas affected by salt sheets. The rule included well-defined, specific criteria for determining when a lease is eligible for a suspension. In establishing the new provision for an SOO, there was some fear that the rule would be used as a means of avoiding diligence. Thus far, this has not been a problem—in large part due to the use of well-defined specific criteria for eligibility.

While the rule issued in 2002 encouraged drilling under salt sheets, that rule does not address situations where salt does not exist. Information from industry indicates that large accumulations of hydrocarbons may exist at depths greater than 25,000 feet TVD SS in water depths less than 800 meters. Many lessees are reluctant to spend the money to drill to these depths without sufficient data analysis.

The current regulations (*see* 30 CFR 250.175(b)) allow the lessee or operator to request an SOO if: (1) By the end of the third year of the primary term, geophysical information was gathered that indicated the presence of a salt sheet; (2) all or a portion of a hydrocarbon-bearing formation may lie beneath or adjacent to the salt sheet; and (3) the salt sheet interferes with identifying the potential hydrocarbon-bearing formation. In August 2004, MMS issued NTL No. 2004–G16, providing additional guidance for granting SOO's to lessees or operators who planned to drill an ultra-deep well beneath or adjacent to a salt sheet. The NTL allowed the lessee or operator planning to drill an ultra-deep well to request the SOO if this geologic information was gathered by the end of the fifth year of the primary term, instead of at the end of the third year. In addition, the operator had to submit a reasonable working schedule leading to the commencement of drilling. This proposed rule will replace the NTL, and also allow the lessee or operator to request an SOO in areas where a salt sheet does not exist.

Allowing a lessee additional time for this data analysis encourages companies to consider ultra-deep exploration. A successful development will generate more activity at lease sales and increase drilling on existing leases.

MMS recognizes that a lessee knows the length of the lease term when it obtains a lease. When a lease expires, another lessee can acquire a new lease of the same tract and receive a new 5-year term to explore. MMS considered these factors, and believes that the need to encourage drilling to significantly deeper depths warrants the proposed rule change. Successful wells benefit not only the companies that drilled the wells, but also the public by increasing domestic energy sources. In addition, the drilling of successful wells will encourage other companies to acquire leases and to pursue ultra-deep exploration in U.S. waters.

Proposed Regulation

MMS is proposing to amend the regulations that govern oil and gas leases to allow an SOO in limited situations to encourage drilling ultra-deep wells to depths of at least 25,000 feet TVD SS. This rule would allow lessees or operators to apply for SOO's under the following circumstances:

- The lease has either a 5-year primary term, or an 8-year primary term with a requirement to drill within the first 5 years;
- The lessee or operator has plans to drill an ultra-deep well (at least 25,000 feet TVD SS) on the lease;
- Before the end of the fifth year of the primary term, the lessee or operator must have acquired and interpreted geophysical information that indicates that all or a portion of a potential hydrocarbon-bearing formation is ultra-deep and includes full 3–D depth migration over the entire lease area.
- Before requesting the suspension, the lessee or operator has conducted, or is conducting, additional data processing or interpretation of the geophysical information with the objective of identifying a potential ultra-deep hydrocarbon-bearing formation.
- The lessee or operator demonstrates that additional time is necessary to complete current processing or interpretation of existing geophysical data or information; acquire, process, or interpret new geologic and/or geophysical data or information, that would impact the decision to drill the same geologic structure or stratigraphic trap; or drill into the potential hydrocarbon-bearing formation identified as a result of the activities conducted in previous paragraphs.

Leases issued with 10-year primary terms are not included in this proposed rule because MMS feels that 10 years is sufficient to explore and develop such deep prospects.

Other Possible Solutions

MMS considered using current regulations to grant suspensions for ultra-deep drilling. However, MMS determined that the current regulations regarding SOO's and SOP's are not adequate to address ultra-deep drilling in all situations. An SOP applies only when there is a commitment to produce

proven reserves, as required by 30 CFR 250.171. An SOO may be requested under 30 CFR 250.175(a) for situations where a delay in lease holding operations occurs because of situations that are beyond the control of the company, such as weather and accidents. If the target depth for potential drilling is beneath or adjacent to a salt sheet, an SOO may be requested under 30 CFR 250.175(b). Also, pursuant to 30 CFR 250.180(e), NTL 2000–G22 provides for a lease term extension by allowing additional time beyond the 180-days between lease holding operations to refine subsalt imaging techniques and to process and interpret the imaging. None of these regulations addresses granting a suspension to allow for the additional time involved in the planning for drilling an ultra-deep well not associated with a salt sheet.

MMS also considered longer primary lease terms as a way to provide more time to companies that drill to deep depths. However, when leases are issued it is impossible to determine which ones may be suitable for ultra-deep drilling.

Questions

MMS is interested in comments on this proposed rule from any interested parties. The questions on which MMS seeks comments include:

- Is the proposed rule easy to read and understand?
- Is the proposed rule well organized?

You can send your responses to these questions and other comments to MMS by any of the methods described in the **ADDRESSES** paragraph.

Procedural Matters

Public Comment Policy: All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. Except for proprietary information, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under Executive Order 12866.

The major economic effect of the proposed rule would involve business decisions made by oil and gas producers. MMS expects that a project to drill an ultra-deep well will need to compete with other high risk projects in deep water or in other countries. By increasing the potential benefits resulting from drilling high risk, ultra-deep wells, lessees would be more likely to drill these wells in the U.S. instead of drilling in other high risk areas. These decisions are based on marginal cost and benefit differences among projects, and are driven by many factors. Whether this rule is issued is only one of the factors. Lessees or operators will not request a suspension unless it is in their financial interest. Therefore, this proposed rule change would not impose a cost on the lessee or operator.

There are other financial considerations that would result directly from this proposed rule. Drilling a well to 25,000 or more feet TVD SS is a significant occurrence, and MMS does not anticipate an immediate drastic increase in drilling to that depth. This proposed rule change, combined with any applicable deep-gas royalty relief, would be expected to increase drilling activities into areas deeper than 25,000 feet TVD SS. Ultra-deep drilling activity is expected to gradually increase in subsequent years. MMS estimates that this proposal would result in 10 suspension requests per year, averaged over the 5 years following the effective date of a final rule; and that most of the requests will be in water depths of less than 200 meters. MMS economic analysis assumes that a suspension will result, on average, in each suspended lease remaining active for 2 years longer than without the suspension.

Of the leases in water depths of less than 200 meters that expired in 2000, approximately half received new bids within 2 years, with an average high bid of approximately $556,000. The delayed expiration of the leases for which SOO's are requested under this proposed change will result in a delay in reoffering the tracts. If the anticipated 10 leases that would have expired without a suspension were to be offered in a lease sale, MMS estimates that five would receive bids at an average of $556,000 per lease, for a total of $2,780,000. This proposed rule is estimated to result in a 2-year delay in the receipt of that $2,780,000 in bonus revenues.

However, this delay in receiving re-leasing revenues would be partially offset by increased government revenue due to the continued collection of rents. The extra rent generated by the anticipated suspended leases will be $500,000 ($5.00 rent per acre $\times$ 5,000 acres $\times$ 10 leases $\times$ 2 years). The greater potential effect of this proposed rule is the additional royalties collected if large reservoirs of hydrocarbons are discovered in ultra-deep areas, as well as the effect of success on bonuses and rents in future lease sales.

The presently quantifiable effects of this proposed rule are small compared to the potential for an increase in energy production. There are more than 3,000 active leases in water depths less than 200 meters. In any given year, this change is expected to affect less than 0.35 percent of those leases. The main effect of this proposed rule would be the potential impact on energy and domestic production if a large reservoir of hydrocarbons is discovered.

(1) This proposed rule would not have an annual effect of $100 million or more on the economy. It would 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.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Issuance of a suspension for a lease does not interfere with the ability of other agencies to exercise their authority.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This change will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs.

(4) This proposed rule would not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*).

This proposed change would affect lessees and operators of leases in the OCS. This includes about 130 different companies. These companies are generally classified under the North

American Industry Classification System (NAICS) code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent of these companies are considered small. This proposed rule, therefore, would affect a substantial number of small entities.

This proposed rule would not create a cost to any small companies, since it provides a suspension only when one is requested. Small companies could be affected by the delay in the expiration of leases and the availability of the tract to be leased again. As discussed earlier, this would be a very small portion of the available leases. The proposed rule would not affect the ability of a small company to participate in OCS exploration, development, and production.

Comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This is not a major rule under the SBREFA (5 U.S.C. 804(2)). This proposed rule:

(a) Would not have an annual effect on the economy of $100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This proposed rule is not expected to have a significant effect. As discussed under procedural matters, Regulatory Planning and Review (Executive Order 12866), each year this change is estimated to increase rental receipts by $500,000, offsetting a 2-year delay in receipt of $2,780,000 in bonus revenues. This amount is not a significant effect for companies that do business on the OCS.

Paperwork Reduction Act (PRA) of 1995

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The revisions to 30 CFR part 250 subpart A refer to, but do not change, information collection requirements in current regulations. OMB has approved the referenced information collection requirements under OMB control number 1010–0114, current expiration date of October 31, 2007. The proposed rule would impose no new paperwork requirement, and an OMB form 83–I submission to OMB under the PRA is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the proposed rule would not have Federalism implications. It would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed change would not affect that role.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the proposed rule would not have significant Takings implications. A Takings Implication Assessment is not required. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

This is not a significant rule and is not subject to review by OMB under Executive Order 13211. The proposed rule may potentially increase energy supplies, but given the uncertainty associated with the drilling of successful wells, the effect on energy supply, distribution, or use is not considered to be significant at this time. Thus, a Statement of Energy Effects is not required.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system, and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act (NEPA) of 1969

MMS analyzed this proposed rule using the criteria of the NEPA and 516 Departmental Manual, Chapter 2, and concluded that the preparation of an environmental analysis which would result in the issuance of a FONSI or the preparation of an environmental impact statement would not be required.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. This is because the proposal would not affect State, local, or tribal governments, and the effect on the private sector is small.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: February 2, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, MMS proposes to amend 30 CFR 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for Part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.175, add a new paragraph (c) to read as follows:

§ 250.175 When may the Regional Supervisor grant an SOO?

* * * * *

(c) The Regional Supervisor may grant an SOO for drilling below 25,000 feet true vertical depth, subsea (TVD SS),

when all of the following conditions are met:

(1) The lease was issued with a primary lease term of:

(i) 5 years; or

(ii) 8 years with a requirement to drill within 5 years.

(2) Before the end of the fifth year of the primary term, you or your predecessor in interest must have acquired and interpreted geophysical information that:

(i) Indicates that all or a portion of a potential hydrocarbon-bearing formation lies below 25,000 feet TVD SS; and

(ii) Includes full 3-D depth migration over the entire lease area.

(3) Before requesting the suspension, you have conducted or are conducting additional data processing or interpretation of the geophysical information with the objective of identifying a potential hydrocarbon-bearing formation below 25,000 feet TVD SS.

(4) You demonstrate that additional time is necessary to:

(i) Complete current processing or interpretation of existing geophysical data or information;

(ii) Acquire, process, or interpret new geophysical and/or geological data or information that would impact the decision to drill the same geologic structure or stratigraphic trap, as determined by the Regional Supervisor, identified in paragraphs (c)(2) and (c)(3) of this section; or

(iii) Drill into the potential hydrocarbon-bearing formation identified as a result of the activities conducted in paragraphs (c)(2), (c)(3), and (c)(4) of this section.

[FR Doc. 05–2747 Filed 2–11–05; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0004; FRL–7872–6]

Approval and Promulgation of State Implementation Plans; Texas; Revision to the Rate of Progress Plan for the Houston/Galveston (HGA) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) Post–1999 Rate of Progress (ROP) Plan, the 1990 Base Year Inventory, and the Motor Vehicle Emissions Budgets (MVEB) established by the ROP Plan, for the Houston Galveston (HGA) ozone nonattainment Area submitted November 16, 2004. The intended effect of this action is to approve revisions submitted by the State of Texas to satisfy the reasonable further progress requirements for 1-hour ozone nonattainment areas classified as severe and demonstrate further progress in reducing ozone precursors. We are proposing to approve these revisions in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before March 16, 2005.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/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: Guy Donaldson, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7242; fax number (214) 665–7263; e-mail address *donaldson.guy@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 rule, 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 2, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–2792 Filed 2–11–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7869–3]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Firestone Tire and Rubber Company Superfund site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IX announces the intent to delete the Firestone Tire and Rubber Company Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of California, through the California Department of Toxic Substances Control (DTSC), have determined that the remedial action for the Site has been successfully executed.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before March 16, 2005.

ADDRESSES: Comments may be mailed to: Vicki Rosen, Community Involvement Coordinator, U.S. EPA Region IX (SFD–3), 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3244 or 1–800–231–3075.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: U.S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, San Francisco, CA 94105–3901, (415) 536–2000, Monday through Friday 8 a.m. to 5 p.m.; John Steinbeck Library, 350 Lincoln Avenue, Salinas, CA 93901, (831) 758–7311.

FOR FURTHER INFORMATION CONTACT: Patricia Bowlin, Remedial Project Manager, U.S. EPA Region IX (SFD–7–

3), 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3177 or 1–800–231–3075.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region IX announces its intent to delete the Firestone Tire and Rubber Company Superfund Site (Site) in Salinas, Monterey County, California from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites which present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of California, through the California Department of Toxic Substances Control (DTSC), have determined that the remedial action for the Site has been successfully executed.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this notice in **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Firestone Tire and Rubber Company Superfund site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that sites may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the site poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and restricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) All appropriate responses under CERCLA have been implemented and no further actions by EPA or the responsible party are appropriate; (2) the State of California has concurred with the proposed deletion decision; (3) a notice has been published in the local newspapers and has been distributed to appropriate Federal, State, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available in the local site information repositories.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis of Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The Firestone Tire and Rubber Company, now Bridgestone/Firestone, Inc., owned and operated a tire manufacturing facility at 340 El Camino Real South between 1963 and 1980. The Site is surrounded by agricultural lands and is approximately six miles southeast of downtown Salinas, California. During the facility's operation, Firestone released chlorinated solvents and other chemicals, particularly volatile organic compounds (VOCs), to the soil and groundwater at the Site.

In March 1983, Firestone began investigations at the facility to comply with Resource Conservation and Recovery Act (RCRA) closure requirements. Based on these investigations, the California Department of Health Services (DHS) required Firestone to conduct extensive soil and groundwater characterizations and subsequent interim remedial measures to address soil and groundwater contamination. Firestone removed approximately 65,000 cubic yards of contaminated soil and 9,000 gallons of hazardous liquids for off-site disposal in a Class I landfill. In October 1985, DHS issued a Remedial Action Order (RAO) to Firestone to address the groundwater contamination.

The groundwater aquifer system in the area is comprised of three interconnected aquifers that are designated shallow, intermediate, and deep aquifers. Directly downgradient of the Site, groundwater in the intermediate and deep aquifers is used primarily for agricultural supply along with potential private domestic supply. Further downgradient, the City of Salinas relies on groundwater in the deep aquifer for municipal water supply.

Pursuant to the RAO, Firestone constructed a groundwater extraction and treatment system to control migration of the groundwater contamination from the Site. The system included 15 onsite shallow aquifer extraction wells and an air stripper/carbon adsorption treatment plant. The system was expanded in 1987 by installing five offsite shallow aquifer extraction wells and modifying the treatment plant to accommodate the additional flow.

Response Actions

EPA listed the Site on the NPL on July 22, 1987. DHS (now DTSC) served as

lead agency and provided oversight of Superfund activities at the Site. The final Remedial Investigation (RI), completed in December 1988, consisted of a comprehensive study of residual groundwater contamination in aquifers beneath and adjacent to the Site and a groundwater risk assessment. The RI found that the shallow aquifer groundwater extraction and treatment system was successfully removing the contamination in the shallow aquifer; however, the RI also found that some contamination, exceeding health-based levels, had migrated to the intermediate aquifer and to a small area of the deeper aquifer.

Firestone completed the final Feasibility Study/Remedial Action Plan (FS/RAP) in August 1989. On September 6, 1989, DHS approved the RAP selecting the final Site remedy. On September 13, 1989, EPA issued a Record of Decision (ROD) Declaration that formally concurred with the remedy selected by DHS. The final remedy provided for remediation of groundwater onsite and offsite extending to a distance of over two miles from the Site and included the following major components:

- Continued pumping of groundwater from the shallow aquifer;
- Installing five new wells and pumping groundwater from the intermediate aquifer;
- Treatment of extracted groundwater by air stripping and carbon adsorption;
- Discharge of treated water to the Salinas River;
- Regular groundwater monitoring to ensure that the size of the contaminant plume is declining and to allow for adjustments to the extraction and treatment system;
- Crop testing to ensure no uptake of contaminants by plants; and
- A monitoring and contingency plan for currently uncontaminated water in the deep aquifer which could become contaminated.

In October 1989, Firestone installed the five intermediate aquifer extraction wells and connected the new wells to the existing groundwater treatment plant. After DHS provided EPA with final certification of the implementation of the remedy, EPA issued the Interim Closeout Report in December 1991.

After achieving cleanup levels in all extraction wells, Firestone stopped pumping and conducted an aquifer stability test in November 1992. Based on the results of the aquifer stability test, DTSC allowed the groundwater extraction and treatment system to remain shut down with continued groundwater monitoring until July 1995. Post-remediation monitoring of deep and intermediate aquifer wells showed no exceedances of the groundwater cleanup levels; however, monitoring of the shallow aquifer wells showed increases in contaminant concentrations to above cleanup levels in two wells located near the former Firestone facility. The two shallow aquifer wells were screened in the upper zone of the shallow aquifer. The upper zone of the shallow aquifer is unsaturated for extended periods of time because it is above the normal groundwater table.

Since the residual contamination above the normal groundwater table was mainly a water quality issue, DTSC deferred the decision of case closure to the California Regional Water Quality Control Board (RWQCB). In 1998, Firestone conducted confirmation sampling that indicated that the residual contamination in the upper zone of the shallow aquifer had not impacted the intermediate and deep aquifers and that the contaminant concentrations in the two monitoring wells were decreasing. Based on these sampling results, RWQCB concluded that the residual contamination in the upper zone of the shallow aquifer would attenuate to below cleanup levels and would not impact the downgradient groundwater and deeper aquifers. With RWQCB's approval, Firestone dismantled the groundwater extraction and treatment system and properly abandoned all monitoring and extraction wells. On July 26, 2000, RWQCB closed the case and recommended that DTSC implement final case closure.

The groundwater cleanup levels in the RAP/ROD were set at Maximum Contaminant Levels (MCLs) based on the designated beneficial use of the aquifers in the area for drinking water. In June 2002, Firestone submitted a hydrogeologic evaluation of the upper zone of the shallow aquifer where the two monitoring wells were screened. The evaluation concluded that the upper zone of the shallow aquifer is not suitable as a potential drinking water source because the zone is suspended over a silty clay aquitard and is often unsaturated for extended periods. In a March 5, 2003, letter, RWQCB concurred with Firestone's evaluation and concluded that the upper zone of the shallow aquifer appears to have no beneficial use based on the lack of groundwater. Therefore, MCLs do not apply to the upper zone of the shallow aquifer since this zone is not suitable as a drinking water source. Based on RWQCB's determination and the achievement of the cleanup levels in all other areas and zones, EPA concluded and DTSC concurred that the Site can be deleted from the NPL list.

Cleanup Standards

The cleanup of the Site complies with the ''clean closure'' requirements, consistent with the Resource Conservation and Recovery Act of 1976, as amended, 40 CFR section 264.111. All contaminated soils were removed to unrestricted land use standards in 1983. The groundwater extraction and treatment system was operated from 1986 until 1992 when monitoring results indicated that the cleanup levels were achieved. Post-remediation monitoring confirms that there are no hazardous substances remaining at the Site above health-based levels.

Five-Year Review

EPA has conducted two five-year reviews for the Site as a matter of policy. EPA completed the first five-year review for the Site on November 16, 1994. EPA completed the second five-year review for the Site on September 28, 2001. In the second five-year review, EPA concluded that the residual contamination in the upper zone of the shallow aquifer did not constitute a significant risk to human health or the environment but that the Site had not met the cleanup standards of the RAP/ROD because the RWQCB considered the shallow groundwater as an unlikely but potential drinking water source. Later the RWQCB determined that the upper zone of the shallow aquifer was not a potential drinking water source. Based on the RWQCB's determination that the affected shallow zone has no beneficial use and the achievement of the cleanup levels in all other areas and zones, further five-year reviews are no longer required for the Site.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. The deletion docket contains the documents on which EPA relied for the NPL deletion recommendation and is available to the public in the information repositories.

Applicable Deletion Criteria/State Concurrence

EPA has determined that all appropriate responses under CERCLA have been completed and that no further response actions under CERCLA are necessary. In a letter dated July 3, 2003, the State of California through DTSC concurred with EPA that all appropriate responses under CERCLA have been completed. Therefore, EPA is proposing deletion of this Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: January 26, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 05–2179 Filed 2–11–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. MARAD–99–5038]

RIN 2133–AB37

Regulations To Be Followed by All Departments and Agencies Having Responsibility To Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD, we, our) is withdrawing an advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** on January 28, 1999, which requested comments on proposed amendments to MARAD's cargo preference regulations. Based on comments received and on continuing discussions with other Federal agencies, there are several issues on which MARAD and other Federal agencies have yet to reach agreement. MARAD is involved in a negotiation process with other agencies in order to resolve these issues. Once discussions and negotiations with other agencies are complete, MARAD will initiate a new rulemaking action.

DATES: The ANPRM is withdrawn February 14, 2005.

ADDRESSES: 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 St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues you may call Thomas W. Harrelson, Director, Office of Cargo Preference at (202) 366–5515. For legal issues you may call Murray Bloom, Chief, Division of Maritime Programs of the Office of the Chief Counsel at (202) 366–5320. You may send mail to both of these officials at Maritime Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The Cargo Preference Act of 1954, Pub. L. 83–664, 68 Stat. 832 (1954), amended the Merchant Marine Act, 1936, by adding Section 901(b), codified at 46 App. U.S.C. 1241(b) ('54 Act). The '54 Act applies: ''[w]henever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities. * * *''

Government agencies are required to take such steps as may be necessary and practicable to assure that at least 50 percent of the gross tonnage of certain government-sponsored cargoes—

''* * * (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately-owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas.* * *''

The Food Security Act of 1985, Pub. L. 99–198, exempted certain agricultural export enhancement programs from cargo preference, but increased the U.S.-flag share of humanitarian food aid programs from 50 to 75 percent.

MARAD's oversight role in administration of cargo preference is founded on section 27 of the Merchant Marine Act of 1970, Pub. L. 91–469, which added the following subsection to section 901(b) of the Merchant Marine Act, 1936:

''Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto.'' 46 App. U.S.C. 1241(b).

The Secretary of Transportation has delegated the authority under this provision to the Maritime Administrator. (49 CFR 1.66(e)). MARAD's regulations governing administration of cargo preference are located at 46 CFR part 381. Parts 381.4, 381.5 and 381.7 of 46 CFR implement the substantive requirements of U.S.-flag carriage authorized by the '54 Act. The Secretary of Transportation does not intend to allow any diminution of adherence to these regulatory requirements. Guidance as to the priority of a completely U.S.-flag service over a mixed U.S./foreign-flag service is contained in a policy letter issued on June 16, 1986.

II. Summary of the ANPRM

On January 28, 1999, MARAD published an ANPRM (64 FR 4382) requesting comments on several proposed changes to the regulations governing the '54 Act. MARAD received 15 comments on the ANPRM. Respondents included U.S. shipper agencies, vessel operators, unions, industry associations, a freight forwarder, and a non-vessel operating common carrier. A discussion of the comments follows.

III. Discussion of Comments

The ANPRM requested comments on six specific questions and on one general question inviting suggestions for other potential amendments to the cargo preference regulations. The questions included: (1) Whether MARAD should clarify 46 CFR sections 381.4 and 381.5 to best insure that the legislatively required percentage of cargo is actually shipped on U.S.-flag vessels; (2) whether the Vessel Priority Rule should be changed; (3) whether MARAD should change the basis for compliance measurement; (4) whether MARAD should formally define ''liner vessel,'' ''transshipment,'' or ''relay''; (5) whether MARAD should require the use of commercial terms for cargo preference transactions; (6) whether MARAD should require the use of commercial practices in the transportation of preference cargos; and (7) whether MARAD should implement other amendments to its regulations.

In response to question one, all commenters agreed that clarifications and revisions to sections 381.4 and 381.5 would be beneficial. Thus,

MARAD will seek to revise and update the sections, keeping the commenters' suggestions in mind, in a future rulemaking.

Turning to question two, nine of the ten respondents strongly opposed changing the current Vessel Priority Rule. One respondent, the USDA, favored changing the rule. MARAD is working with the USDA and other agencies to reach a consensus regarding this and other issues and will revisit this issue in a future rulemaking.

The third question posed in the ANPRM regarding possible changes to the basis for compliance measurement is closely linked to the first question. In turn, the views expressed in the comments submitted in response to question three were essentially identical to those submitted in response to question one. MARAD will address this issue and seek further public comments in a future rulemaking.

In response to question four, in which MARAD asked if we should formally define ''liner vessel,'' ''transshipment,'' or ''relay,'' there was no general consensus from the commenting parties. Thus, MARAD may solicit further comments regarding this issue in a future rulemaking.

In response to question five, the majority of commenters favored the use of standardized commercial terms. Thus, MARAD will revisit this issue in a future rulemaking.

In response to question six, the commenters generally supported the idea that MARAD require the use of commercial practices. Thus, MARAD will also revisit this issue in a future rulemaking.

Finally, in response to question seven, the commenters offered several suggestions to assure compliance by shipper agencies. MARAD will revisit these topics and seek further public input in a future rulemaking.

IV. Reason for Withdrawal

Since cargo preference requirements apply to government shipper agencies as well as to the private shipping industry, issues arise from the differing goals and activities of government agencies versus private industry. Because MARAD and other government agencies have yet to agree on several important issues, we are in the process of discussing and negotiating our differences with other agencies in an effort to accommodate other agencies' needs while still applying cargo preference in the manner intended by Congress. Once discussions and negotiations with other agencies are complete, MARAD will initiate a new rulemaking action.

(Authority: 49 CFR 1.66)

Dated: February 8, 2005.

By Order of the Maritime Administrator

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–2753 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT42

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arroyo Toad (*Bufo californicus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revisions to proposed critical habitat, reopening of public comment period, and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis for the proposed designation of critical habitat for the arroyo toad (*Bufo californicus*) under the Endangered Species Act of 1973, as amended (Act). We also announce that we have revised the methods for determining proposed essential and critical habitat areas for the arroyo toad. Additionally, we propose to exclude areas from the proposed designation from Units 1, 6, and 22 in Monterey, Los Angeles, and San Bernardino counties, under authority of section 4(b)(2) of the Act. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as a part of this reopening of the comment period, and will be fully considered in preparation of the final rule. Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at *http://ventura.fws.gov* or from the Ventura Fish and Wildlife Office at the address and contact numbers below.

DATES: We will accept comments and information until 5 p.m. on March 16, 2005. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods:

(1) You may submit written comments and information to Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

(2) You may hand-deliver written comments to our office, at the address given above.

(3) You may fax your comments to 805/644–3958.

(4) You may send comments by electronic mail (e-mail) to *fw1artoch@r1.fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our internet connection is not functional, please submit your comments by the alternate methods described above.

FOR FURTHER INFORMATION CONTACT: Creed Clayton or Michael McCrary, Ventura Fish and Wildlife Office, at the address listed above (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments and information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule (69 FR 23254, April 28, 2004) and amendments, proposed exclusions, or the draft economic analysis for the arroyo toad. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of exclusion outweigh the benefits of specifying such area as part of critical habitat;

(2) Specific information on the amount and distribution of arroyo toad habitat, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) We request information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of the arroyo toad, and how many were either already in place or enacted for other reasons;

(6) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not, what costs are overlooked;

(7) Are the adjustments to local governments' economic data made by the draft economic analysis, as set out in its appendices, reasonable? If not, please provide alternative interpretations and the justification for the alternative and/or the reasons the interpretation in the draft economic analysis is not correct;

(8) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(9) Whether the draft economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(10) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(11) Whether the draft economic analysis appropriately identifies all costs that could result from the designation;

(12) Whether the assumptions used in Appendix A of the draft economic analysis are valid; and

(13) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section).

Please submit internet comments to *fw1artoch@r1.fws.gov* in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: Arroyo Toad Critical Habitat'' in your e-mail subject header, and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly by calling our Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in our Ventura Fish and Wildlife Office at the above address.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the internet at *http://ventura.fws.gov* or from the Ventura Fish and Wildlife Office at the address and contact numbers above. In the event that our internet connection is not functional, please obtain copies of documents directly from the Ventura Fish and Wildlife Office.

Background

The arroyo toad is a small (adult length 2–3 inches (55–82 millimeters)), dark-spotted toad, with females larger than males (59 FR 64859). The arroyo toad is found in coastal and desert drainages from Monterey County, California, south into northwestern Baja California, Mexico. These systems are inherently dynamic, with marked seasonal and annual fluctuations in climatic regimes, particularly rainfall. Arroyo toad populations annually fluctuate due to natural climactic variations as well as other random events, such as fires and floods, coupled with the species specialized habitat requirements. Extensive habitat loss as a result of agriculture and urbanization, and the construction, operation, and maintenance of water storage reservoirs, flood control structures, roads, and recreational facilities such as campgrounds and off-highway vehicle parks, have caused many arroyo toad populations to be reduced in size or extirpated (eliminated) (59 FR 64859, December 16, 1994). Threats to the species survival include loss of habitat, habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, predation from introduced aquatic species, and habitat degradation from introduced plant species. These threats have caused arroyo toads to be extirpated from about 75 percent of the previously occupied habitat in California.

Pursuant to the Act, the species was federally-listed as endangered on December 16, 1994, due to habitat degradation, small population sizes, and predation (59 FR 64859). We designated a total of approximately 182,360 acres (ac) (73,780 hectares (ha)) of critical habitat for the arroyo toad on February 7, 2001 (66 FR 9414). On November 6, 2001, building industry representatives filed a lawsuit against the Service challenging the designation of arroyo toad critical habitat (*Building Industry Legal Defense Foundation,* et al. v. *Gale Norton, Secretary of the Interior,* et al. Civ. No. 01–2311 (JDB) (D.D.C.)). On October 30, 2002, the court set aside the designation and ordered us to publish a new critical habitat designation final rule for the arroyo toad by July 30, 2004. The court subsequently extended the deadline to March 31, 2005. On April 28, 2004, we proposed approximately 138,713 acres (ac) (56,133 hectares (ha)) as critical habitat for the arroyo toad (69 FR 23254) in compliance with the court order. Since our April 28, 2004, proposed designation, we have revised our methods as described below to identify 132,282 ac (53,533 ha) of essential habitat areas. Of the essential habitat, we also propose to exclude approximately 36,738 ac (14,867 ha) from the proposed designation. Therefore, after using our new methods, in addition to the proposed exclusions, we propose approximately 95,544 ac (38,668 ha) as critical habitat for the arroyo toad. Proposed critical habitat is located in Santa Barbara, Ventura, Los Angeles, Orange, San Bernardino, Riverside, and San Diego counties, California, as described in the proposed designation.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit

destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Summary of Changes to the Proposed Rule

As part of our proposed designation of critical habitat for the arroyo toad, we have made the following changes to our proposed designation:

(1) We mapped critical habitat more precisely by eliminating habitat areas of marginal quality that we do not expect to be used by arroyo toads. In certain upland locations, we determined that busy, paved roads and railroads constituted barriers to toad movement into the uplands. These roads and railroads were found in areas of relatively steep slopes and were supported by steeply-constructed embankments. Where marginal upland habitat was found behind these barriers, it was removed from critical habitat because we do not consider it essential to the arroyo toad population. More precisely mapping critical habitat in this way led to a modest reduction in total acreage from the proposed rule.

(2) Although we attempted to remove as many developed areas as possible before publishing the proposed rule (areas that have no value as arroyo toad habitat such as buildings and roads), we were not able to eliminate all developed areas. Since publication of the proposed rule, we were able to further eliminate a small amount of developed area, which has resulted in a more precise delineation of essential habitat containing one or more of the primary constituent elements. This resulted in a minor reduction in the total acreage published in the proposed rule. However, as it is not possible to remove each and every one of these features even at the refined mapping scale used, therefore the maps of the proposed designation still includes areas that do not contain primary constituent elements. These areas are not being proposed as critical habitat.

(3) In some cases, an upstream or downstream boundary was expanded as a result of the 82-foot (ft) (25-meter (m)) elevational limit in the model we used to determine the extent of the essential upland habitat arroyo toads use for foraging. We changed this upland boundary to our original starting and ending points along a stream, leading to a minor reduction in the total acreage published in the proposed rule.

(4) In subunit 6b, we have determined that San Francisquito Creek above the Newhall Ranch Road bridge does not contain the primary constituent elements to be considered arroyo toad critical habitat. This is because this area is drier than we had originally understood and lacks surface water for a sufficient duration during the spring time during most years to allow for arroyo toad tadpole development. Thus, this portion of San Francisquito Creek, which was included in the proposed rule, does not provide breeding habitat for arroyo toads, and we no longer consider it to be essential for the conservation of the species. Below the Newhall Ranch Road bridge, arroyo toads inhabiting the Santa Clara River may disperse into lower San Francisquito Creek to forage and aestivate; we still consider this reach of San Francisquito Creek to be essential habitat.

(5) We no longer consider the arroyo toad habitat within subunit 22b, a stretch of the Mojave River running through Victorville in San Bernardino County, to be essential to the conservation of the species. Although we do not have new data concerning arroyo toads in this area, we further analyzed and reevaluated the existing data (and lack thereof) to arrive at this decision. This subunit runs through the relatively urbanized area of Victorville and involves numerous private landowners. Much of the upland habitats along the Mojave River in this area have been developed, and even areas within the floodplain have been developed, which are protected by levees. Exotic predators of the arroyo toad have also invaded this portion of the river. Additionally, the occupancy of subunit 22b by arroyo toads is questionable at best. Arroyo toads were rumored to be calling in the Victorville area sometime during the 1990's, probably associated with the last significant El Niño event, but there have been no confirmed reports from this area since 1982. The recovery plan (Service 1999) states that arroyo toads are presumed extinct in this reach.

(6) We revised the criteria we used to identify essential habitat. We truncated the upland habitat delineation at a distance of 1,640 ft (500 m) from streams, instead of 4,921 ft (1,500 m) from streams, if the 82-ft (25-m) elevation limit had not yet been reached at that point. The 82-ft (25-m) elevation limit was reached at distances less than 1,640 ft (500 m) from the mapped stream channel along the majority of the stream reaches, so the distance limit was often not a factor. We based this distance on the results of an arroyo toad study on Camp Pendleton in San Diego County (Holland and Sisk 2000), which is the most in-depth, complete study of the distribution and use of upland habitat by arroyo toads. Holland and Sisk (2000) used extensive pitfall trap arrays at different distances and locations, and operated the traps at different times of year over several years. Eighty-eight percent of the adult and sub-adult toads were captured in the riparian wash area. Although a few toads were caught at distances of 3,281 ft (1,000 m) or more from the riparian wash area, approximately 68 percent of the arroyo toads captured in upland habitats were within 1,640 ft (500 m). No arroyo toads have been located farther than 1,640 ft (500 m) from a stream in any other study to our knowledge.

(7) For a variety of reasons, we propose to exclude areas of essential habitat from the proposed critical habitat designation in units 1, 6, and 22. In these areas we believe the benefits of exclusion outweigh the benefits of inclusion, as further described below under Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act. In all cases, arroyo toad habitat proposed for exclusion is being protected through other plans, agreements, conservation agreements, or legal instruments. This exclusion would result in the reduction of 9,513 ac (3850 ha) of essential habitat from the designation. We request public comment on whether these areas should be excluded in the final designation, or whether they should be included in the designation.

Draft Economic Analysis

Section 4 of the Act requires that we consider economic impacts, the impact on national security, and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We have prepared a draft economic analysis for the proposal to designate certain areas as critical habitat for the arroyo toad.

Approximately 54 percent of the proposed critical habitat designation is privately owned land, 39 percent is under Federal ownership, six percent is State and locally owned, and two percent is Tribal. The draft economic analysis addresses the impacts of arroyo toad conservation efforts on activities occurring on lands proposed for designation as well as those proposed for exclusion. The analysis measures lost economic efficiency associated with real estate development; changes in water supply; grazing activities; mining activities; road construction projects; utility and other infrastructure projects;

military activities; the California Environmental Quality Act (CEQA); uncertainty; delay; and habitat conservation plan creation. Additionally, impacts to regional economic output and jobs associated with possible increases in water prices borne by water consumers are considered.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the arroyo toad, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the arroyo toad in essential habitat areas. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered species and considers those costs that may occur in the 20 years following the designation of critical habitat.

Based on our draft economic analysis and comments received on the proposed rule, we are proposing to exclude from designation arroyo toad habitat in Monterey, Los Angeles, and San Bernardino Counties from all or portions of units 1, 6b, and 22a. See Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act.

We solicit data and comments from the public on these draft documents, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Costs related to conservation activities for the arroyo toad pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $1 billion from 2004 to 2025. Overall, the real estate industry is calculated to experience the vast majority of estimated costs (primarily those associated with offsetting compensation or loss in land value), followed by water consumers and road construction projects. Of the 22 proposed critical habitat units (numbers 2 through 23 in the proposed rule (69 FR 23254)), seven are expected to incur economic costs of greater than $50 million between 2004 and 2025. Annualized impacts of costs attributable to the designation are projected to be approximately $94 million. Because the majority of the costs are due to real estate development, the draft economic analysis focused on revising real estate costs associated with the current proposed critical habitat designation. We did not revise the non-real estate costs associated with the current proposed designation because of the time allotted to revise the draft economic analysis and the majority of costs are due to real estate development. Therefore, the costs to non-real estate sectors reflect the previous proposed critical habitat designation.

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species, at the time of listing, on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that do not require special management also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we are proposing as critical habitat as well as for those areas that are formally proposed for designation as critical habitat. Lands we have found do not meet the definition of critical habitat under section 3(5)(A) or have excluded pursuant to section 4(b)(2) include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Legally operative habitat conservation plans (HCPs) that cover the species; (2) draft HCPs that cover the species and have undergone public review and comment (*i.e.*, pending HCPs); (3) Tribal conservation plans that cover the species; (4) State conservation plans that cover the species; (5) National Wildlife Refuge System Comprehensive Conservation Plans; (6) Endangered Species Management Plans prepared by the Army (where a 4(a)(3)(B) exclusion is not possible due to an unsigned Integrated Natural Resource Management Plan (INRMP)); and (7) adequate management plans or agreements that protect the primary constituent elements of the habitat.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances

that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

The proposed rule to designate critical habitat for the arroyo toad outlined various exclusions from critical habitat on military lands and lands protected by an HCP. In this notice we further propose to exclude from critical habitat for the arroyo toad the following areas under sections 3(5)(A) and/or 4(b)(2): unit 1 in its entirety encompassing 6,771 ac (2,740 ha) (Fort Hunter-Liggett), subunit 6b in its entirety encompassing 2,363 ac (956 ha) (private lands), and a portion of subunit 22a encompassing 380 ac (154 ha) (private lands).

Fort Hunter-Liggett and Exclusion Under Sections 3(5)(A) and 4(b)(2)

The arroyo toad occupies an approximately 17-mile (mi) (27-kilometer (km)) segment of the San Antonio River at Fort Hunter Liggett. This arroyo toad population is essential to the conservation of the species because it is the northernmost known population located approximately 100 mi (160 km) north of the nearest documented extant population. Arroyo toads in this unit may experience climatic conditions not faced by toads at sites farther south. The protection of this area is essential to maintaining the complete genetic variability of the species and the full range of ecological settings within which it is found. This stretch of the San Antonio River is not dammed, provides excellent habitat for the arroyo toad, and supports one of the largest populations within the species northern region. We expect Fort Hunter Liggett to complete an INRMP, which is in a final draft form, during 2005 as described below. Because the INRMP is not signed and finalized, we are not considering non-inclusion of Arroyo toad habitat areas under 4(a)(3) of the Act.

In the proposed rule, we considered but did not propose to include mission-essential training areas on Fort Hunter Liggett as critical habitat for the arroyo toad under section 4(b)(2) of the Act, because designation of critical habitat could adversely impact national security. The Army conducts training operations using landing fields, tanks, machine guns, grenade launchers, and other weapons at Fort Hunter Liggett. The Army has stated that it considers critical habitat to conflict with mission-essential training tasks, and that critical habitat designation would adversely affect Fort Hunter Liggett's training mission. The Army submitted a map to us of the mission-essential training areas that are found within lands we determined to be essential to the conservation of the arroyo toad (Army, *in litt.* 2003). During the public comment period for the proposal, the Army stated that we had incorrectly concluded that the only mission-essential areas are the individual training sites. Rather, all Fort Hunter Liggett lands are essential for realistic and effective training. Thus, the designation of the areas we proposed as critical habitat would seriously limit their ability to conduct critical training activities.

The Army recognizes the need for protection and conservation of sensitive species, including the arroyo toad, on military lands and has identified conservation measures to protect and conserve arroyo toads and their habitat. The Army has coordinated with us to finalize the development of their Endangered Species Management Plan (ESMP) for the arroyo toad at Fort Hunter Liggett, which currently guides management of all lands occupied by arroyo toads along the San Antonio River. The ESMP includes measures to minimize harm to the arroyo toad from training activities and outlines actions to ensure the persistence of arroyo toads on the installation. The ESMP is an appendix to, and part of, the INRMP for Fort Hunter Liggett. We expect the INRMP, which is in a final draft form, to be finalized and signed in 2005. We have reviewed Fort Hunter Liggett's ESMP in relation to the three criteria listed above for evaluating management plans, and we find that the ESMP meets the criteria.

(1) Benefits of Inclusion

The primary benefit of any critical habitat with regard to activities that require consultation pursuant to section 7 of the Act is to ensure that the activity will not destroy or adversely modify designated critical habitat. The educational benefits of critical habitat include informing the Army of areas that are important to the conservation of listed species. However, because the Army has worked cooperatively with the Service to develop an ESMP that protects the toad and its essential habitat on Fort Hunter Liggett, and the nearly finalized INRMP is expected to be completed in 2005 (for which we will complete a Section 7 consultation), we do not believe that designation of critical habitat on the fort will significantly benefit the arroyo toad beyond the protection already afforded the species under the Act. In addition, through the INRMP development process and development of the ESMP for the arroyo toad, the Army is already aware of essential arroyo toad habitat areas on the installation.

(2) Benefits of Exclusion

Substantial benefits are expected to result from the exclusion of Fort Hunter Liggett from critical habitat. The Army has stated that all training and non-training areas together are integral to their mission of ensuring troop readiness. If we designate critical habitat on the base, the Army would be required to engage in consultation with us on activities that may affect designated critical habitat. The requirement to consult on activities occurring on the base could delay and impair the ability of the Army to conduct effective training activities and limit Fort Hunter Liggett's utility as a military training installation, thereby adversely affecting national security.

In addition, exclusion of Fort Hunter Liggett lands from the final designation will allow us to continue working with the Army in a spirit of cooperation and partnership. In the past the Army has generally viewed the designation of critical habitat as having a negative regulatory effect that discourages cooperative and proactive efforts by the Army to conserve listed species and their habitats. The Department of Defense generally views designation of critical habitat on military lands as an indication that their actions to protect the species and its habitat are inadequate. Excluding these areas from the perceived negative consequences of critical habitat will facilitate cooperative efforts between the Service and the Army to formulate the best possible INRMP and ESMP and continue effective management of the arroyo toad at Fort Hunter Liggett.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We met with the Army on December 12, 2003, at Fort Hunter Liggett to discuss essential arroyo toad habitat, and possible impacts to the base. We also received extensive comments from the Army during the public comment period. In light of national security interests and the Army's need to maintain a high level of readiness and fighting capabilities, and in light of the Army's completed ESMP for the arroyo toad, we propose to exclude from proposed critical habitat designation all lands on Fort Hunter Liggett. We find that the benefits of excluding these lands from critical habitat outweigh the benefits of including them. We further find that the exclusion of these areas

will not lead to the extinction of the arroyo toad because Army training activities are conducted primarily outside of the riparian corridor where toads are concentrated and the ESMP is expected to effectively manage for the persistence of the San Antonio River population.

Private Land and Exclusion Under Sections 3(5)(A) and 4(b)(2)

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management authority (Wilcove *et al.* 1996). Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of the arroyo toad on private lands in southern California. We believe that the arroyo toad population within subunit 6b and 22a will benefit from landowner conservation actions due to the protection of arroyo toad breeding and foraging habitat. The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. Where consistent with the discretion provided by the Act, we believe it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1998). Thus, we believe it is essential for the recovery of the arroyo toad to build on continued conservation activities with private partners, and to provide positive incentives for other private landowners who might be considering implementing voluntary conservation activities, but have concerns about incurring incidental regulatory or economic impacts.

The recovery of listed species is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of non-Federal landowners and others is essential to accomplishing recovery for listed species (Crouse *et al.* 2002). Much of the land within this designation that is suitable for conservation of the arroyo toad is owned by private landowners; therefore, successful recovery of the arroyo toad is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners.

Several private landowners provided extensive comments during the public comment period after learning that critical habitat had been proposed over some or all of their land. Some of these landowners have approached us and identified their efforts to protect arroyo toad habitat on their land and in some cases offered increased protection of arroyo toad habitat. Those cases where we believe adequate protection of arroyo toad habitat on private land warrants an exclusion from critical habitat are discussed below.

Subunit 6b

As discussed above in the Summary of Changes section, we have determined that San Francisquito Creek above the Newhall Ranch Road bridge does not contain the primary constituent elements of arroyo toad critical habitat, and therefore, we no longer consider this portion of San Francisquito Creek to be essential for the conservation of the species. However, we consider the remainder of subunit 6b, including lower San Francisquito Creek below the Newhall Ranch Road bridge, to be essential habitat.

The Natural River Management Plan (NRMP) (Valencia Company 1998) protects most of the river corridor areas considered essential for the arroyo toad along the Santa Clara River and San Francisquito Creek through subunit 6b with conservation easements, which total approximately 1,200 ac (486 ha). The NRMP was developed to allow for the development of upland areas along the Santa Clara River, while protecting the river corridor as wildlife habitat. We included this area in the critical habitat proposal because the NRMP does not require protection of all river corridor habitats in this area. We were also concerned because, as written in the NRMP, protection could be delayed for up to 20 years beyond initiation of the NRMP. Another concern was that upland habitats along the rivers are not protected under the NRMP.

Since the proposal was published, it has also come to our attention that more of the river corridor and upland habitat is protected than we previously believed. Lands owned by the city of Santa Clarita (upstream from the Southern California Gas Company pipeline), which is adjacent to land covered by the NRMP and contains riparian habitat within the river corridors of the Santa Clara River and San Francisquito Creek and upland habitat adjacent to these river corridors, is protected from development as ''buffer lots.'' Additionally, the Newhall Ranch Specific Plan (separate from the NRMP) includes protection via conservation easement for the Santa Clara River corridor from just above the confluence of Castaic Creek down to the Los Angeles County border. The Castaic Creek river corridor below the I–5 bridge would be protected via conservation easement as well.

Thus, most all of the breeding habitat and riparian river corridor within lands considered essential for the conservation of the species in this subunit is protected or designated for protection via conservation easement. Ultimately these easements will extend along every river mile of Castaic Creek, San Francisquito Creek, and the Santa Clara River within subunit 6b.

It has also come to our attention that the conservation easements protecting these reaches of the river corridor are being conveyed much more rapidly than the 20-year deadline established in the NRMP. Two conservation easements totaling 427 ac (173 ha) protecting arroyo toad habitat have already been conveyed to the California Department of Fish and Game, one protecting lower San Francisquito Creek and the other protecting the Santa Clara River below Bouquet Canyon bridge.

Upon closer examination of the upland habitats bordering the river corridors of the Santa Clara River, San Francisquito Creek, and Castaic Creek, we have found that very little of these lands remain as native habitats that would be useable as foraging areas by arroyo toads. The vast majority of these lands are either developed, used for intensive agriculture, or are inaccessible to arroyo toads due to busy roads or very steep slopes. Fortunately, much of the Santa Clara River corridor is rather broad in this area, providing arroyo toad foraging and burrowing habitat outside of the active river channel, yet still within the broader floodplain and riparian habitats that are protected within the river corridor.

Finally, Newhall Land has offered to protect additional acres of prime arroyo toad habitat within the Santa Clara River corridor for the arroyo toad via conservation easement.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultations ensure that adequate protection is provided to avoid adverse modification of critical habitat. All critical habitat units within this designation are occupied. In the absence of critical habitat, any section 7 consultation for potential adverse effects to the species would not ensure adverse modification of critical habitat is avoided; however, the consultation would ensure the proposed action would not jeopardize the continued existence of the species in the wild.

Designation of critical habitat also provides important information on

those habitats and their primary constituent elements that are essential to the conservation of the species. This information is particularly important to any Federal agency, State, county, local jurisdiction, conservation organization, or private landowner that may be evaluating adverse actions or implementing conservation measures that involve those habitats.

(2) Benefits of Exclusion

The conservation easements that have been conveyed to the California Department of Fish and Game over the Santa Clara River corridor and San Francisquito Creek, and those that will be put in place over the next several years to extend protection along the Santa Clara River corridor and Castaic Creek, are designed to ensure that the property will forever remain in a natural condition. Use of the property is (or will be) confined to the preservation and enhancement of native species and their habitats, including the arroyo toad and its habitat. These conservation easements provide greater protection of the most crucial arroyo toad breeding and foraging habitat in this area than could be gained through the designation of critical habitat. And, as stated above, very little of the upland habitats remain in a natural condition and useable as foraging areas by arroyo toads. Additionally, we have already completed consultation on the effects of the NRMP on the arroyo toad and found that it would not jeopardize the continued existence of the species.

Newhall Land has also indicated that they are willing to further protect arroyo toad habitat within the Santa Clara River corridor by increasing the size of one of the conservation easements required by the NRMP. They have offered to include in a future conservation easement a combined total of approximately 47 ac (19 ha) of currently unprotected riparian habitats along the Santa Clara River downstream from the Interstate 5 bridge. Newhall Land would likely withdraw their offer to protect these riparian habitats, which are useable by arroyo toads for foraging and burrowing, were we to designate critical habitat in this area. The protection of these riparian habitats, along with the areas protected under the NRMP, also provide conservation benefits to other listed and sensitive species (*e.g.*, least Bell's vireo (*Vireo bellii pusillus*) and unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*)). Imposing an additional regulatory review after working cooperatively with landowners to increase protection in this area solely as a result of the designation of critical habitat may undermine existing and future conservation efforts and partnerships. Designation of critical habitat within the boundaries of the NRMP, or similar plans that include substantial conservation easements over wildlife habitat, could also be viewed as a disincentive to property owners contemplating future protection of arroyo toad or other wildlife habitat. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of critical habitat designation on lands within subunit 6b are small while the benefits of excluding such lands from designation of critical habitat are greater. After weighing the small benefits of including these lands against the greater benefits derived from excluding them, including the protection via conservation easement of high-quality riparian habitats, relieving property owners of an additional layer of approvals and regulation, encouraging the pursuit of additional conservation partnerships, and reducing the overall cost of designating critical habitat for the arroyo toad, we have proposed to exclude the land within subunit 6b from proposed critical habitat designation. Because of protection provided for the toad and its habitat via conservation easement along the Santa Clara River, San Francisquito Creek, and Castaic Creek, and due to the various arroyo toad populations found elsewhere, the exclusion of essential arroyo toad habitat within subunit 6b will not result in the extinction of the species. Federal actions in areas occupied by the toad will still require consultation under section 7 of the Act.

Subunit 22a (in part)

During the public comment period, Rancho Las Flores, LLC, submitted comments that included a description of their efforts to protect arroyo toad habitat in Summit Valley, San Bernardino County. The Rancho Las Flores Planned Community (Rancho Las Flores) consists of approximately 9,800 ac (3,966 ha) in Summit Valley surrounding Horsethief Creek and the West Fork of the Mojave River. A portion of Rancho Las Flores falls within subunit 22a. Plans for phases 1, 2, and 3 of Village 1, which is within the larger Rancho Las Flores Planned Community, have been submitted to us, and we completed a section 7 consultation for the project. Included in the project proposal is the stipulation that a conservation easement will be placed over 290 ac (117 ha) of prime arroyo toad habitat within the river corridors of Horsethief Creek and the West Fork of the Mojave River. Conservation measures incorporated into the project description for Rancho Las Flores, along with the conservation easement that would be designed to maintain and enhance habitat quality for the arroyo toad, include measures to reduce impacts from humans, cattle, and arroyo toad predators, minimize impacts from development, monitor the status of the arroyo toad, and remove exotic species. The plan also contains requirements for the funding of arroyo toad habitat maintenance and improvement measures necessary for the conservation easement. Additionally, Rancho Las Flores has spent roughly $200,000 conducting a 3-year arroyo toad habitat usage study, which has already contributed significantly to our overall knowledge of arroyo toad ecology and movement patterns (Ramirez 2003). Of the Rancho Las Flores land in subunit 22a that is essential for the conservation of the species, the best breeding and foraging habitats within the river corridor are designated for protection via the conservation easement.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is that federally-funded or authorized activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultations ensure that adequate protection is provided to avoid adverse modification of critical habitat. All critical habitat units within this designation are occupied. In the absence of critical habitat, any section 7 consultation for potential adverse effects to the species would not ensure adverse modification of critical habitat is avoided; however, the consultation would ensure the proposed action would not jeopardize the continued existence of the species in the wild.

Designation of critical habitat also provides important information on those habitats and their primary constituent elements that are essential to the conservation of the species. This information is particularly important to any Federal agency, State, county, local jurisdiction, conservation organization, or private landowner that may be evaluating adverse actions or implementing conservation measures that involve those habitats.

(2) Benefits of Exclusion

Rancho Las Flores plans to protect 290 ac (117 ha) of prime arroyo toad

habitat via conservation easement within the river corridors of Horsethief Creek and the West Fork of the Mojave River. This land will forever remain in a natural condition, and its use will be confined to the preservation and enhancement of arroyo toad habitat and that of other native species. The conservation easement will provide greater protection of the most crucial arroyo toad breeding and foraging habitat in this area than could be gained through the designation of critical habitat. We have already completed consultation pursuant to Section 7 of the Act on the effects of Phases 1, 2, and 3 of Village 1 on the arroyo toad and found that this project would not jeopardize the continued existence of the species. The protection of these aquatic and riparian habitats also provides conservation benefits to other listed and sensitive species (*e.g.*, bald eagle (*Haliaeetus leucocephalus*)). Imposing an additional regulatory review after working cooperatively with landowners to increase protection in this area solely as a result of the designation of critical habitat may undermine existing and future conservation efforts and partnerships. Designation of critical habitat within the boundaries of Phases 1, 2, and 3 of Village 1, or similar plans that include substantial conservation easements over wildlife habitat, could also be viewed as a disincentive to property owners contemplating future protection of arroyo toad or other wildlife habitat. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of critical habitat designation on lands in subunit 22a within Phases 1, 2, and 3 of Village 1 at Rancho Las Flores are small while the benefits of excluding such lands from designation of critical habitat are greater. After weighing the small benefits of including these lands against the greater benefits derived from excluding them, including the protection via conservation easement of high-quality arroyo toad breeding and foraging habitats, relieving property owners of an additional layer of approvals and regulation, encouraging the pursuit of additional conservation partnerships, and reducing the overall cost of designating critical habitat for the arroyo toad, we have proposed to exclude the land within Phases 1, 2, and 3 of Village 1 from the proposed critical habitat designation. Because of protection provided for the toad and its habitat via conservation easement along Horsethief Creek and the West Fork of the Mojave River, and due to the various arroyo toad populations found elsewhere, the exclusion of essential arroyo toad habitat within Phases 1, 2, and 3 of Village 1 will not result in the extinction of the species. Federal actions in areas occupied by the toad still require consultation under section 7 of the Act.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for the arroyo toad would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, land development, fruit and nut farms, cattle ranching, and small governments). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. In areas where occupancy by arroyo toad is unknown, the designation of critical habitat could trigger additional review of Federal agencies pursuant to section 7 of the Act and may result in additional requirements on Federal activities to avoid destruction or adverse modification of critical habitat.

In our economic analysis of this proposed designation we evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We evaluated small business entities in three categories: land development, fruit and nut farms, and cattle ranching. On the basis of our analysis we determined that this proposed designation of critical habitat for the arroyo toad would result in: (1)

An annual impact to less that one percent (17 projects and therefore businesses—assuming one project per business) of land development small businesses and that those businesses could realize an impact of approximately 20 percent of total annual sales; (2) an annual impact to less that one percent (one farm) of small fruit and nut farms and that that farm would realize an impact of less than three percent of total annual sales; (3) an annual impact to less that one percent of cattle ranches (one ranch) and that the ranch would realize an impact of less than approximately $100,000 of total annual sales; (4) an annual impact to less that one percent of small viticulture firms (one firm) and that the firm would realize an impact of less than approximately five percent of total annual sales; and (5) an annual impact to less that one percent of small governments as a percent of the county total and small governments would realize an impact of less than one percent of annual government budget. Based on this data we have determined that this proposed designation would not affect a substantial number of small land development companies, fruit and nut farms, or cattle ranches. Further, we have determined that this proposed designation would also not result in a significant effect to the annual sales of those small businesses impacted by this proposed designation. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 due to it potentially raising novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the arroyo toad, only two small local governments are located within the boundaries of the proposed designation that may be affected. Based on the analysis, it appears that these two governments may be required to consult with us on the designation over the next 20 years and that the cost of the consultations may result in an impact of less that one percent of the total annual budget of each of the cities. Consequently, we do not believe that the designation of critical habitat for the arroyo toad will significantly or uniquely affect these two small governmental entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for arroyo toad. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of HCPs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the arroyo toad does not pose significant takings implications.

Author

The primary author of this notice is the Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 7, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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Notices

Federal Register
Vol. 70, No. 29
Monday, February 14, 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

Shasta-Trinity National Forest, California; Pilgrim Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Shasta-Trinity National Forest proposes to harvest timber and clean up the resulting down wood (fuels) on approximately 3,770 acres of National Forest System lands. About 90% of the area would be harvested through thinning by removing a portion of the trees from overcrowded forest stands. Trees removed would be those infected with disease or insects and generally smaller in size than those left behind. Most of the trees on the remaining 10% are infected by disease and insects and would be removed. Young tree seedlings would be planted in the openings created in these areas. The project area is in T40 and 41N, R1W, MDM., about 10 miles northeast of the town of McCloud, California. Most of the project area is zoned by the Forest Land and Resource Management Plan as Matrix land. About one percent of the area is zoned as Riparian Reserve (areas adjacent to streams or other wetlands).

DATES: Comments concerning the scope of the analysis should 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 June 2005 and the final environmental impact statement is expected in September 2005.

ADDRESSES: Send written comments to District Ranger Michael Hupp, Shasta-McCloud Management Unit, 204 W. Alma St., Mt. Shasta, California 96067.

FOR FURTHER INFORMATION CONTACT: Steve Funk, McCloud Ranger Station, P.O. Box 1620, McCloud, California 96057, telephone (530) 964–3770 or via e-mail at *sfunk@fs.fed.us*.

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 resistance 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 re-establish live trees in areas where most are dead or dying from insects, pathogens and drought. 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:

1. Thinning harvests on approximately 3,380 acres.

a. On 780 acres of 25–45 year old pine stands, thin from below to a spacing of approximately 20 feet. About 90% of these stands are older plantations. The resulting product will be primarily wood chips.

b. On approximately 1,480 acres of 75–95 year old stands, thin to a density appropriate for ponderosa pine stands (approximately 120–150 square feet of basal area).

c. On approximately 1,080 acres of 75–95 year old pine stands, thin to a slightly more open condition than ''b'' (approximately 100–120 square feet of basal area) by removing additional dead, dying and diseased trees in pockets infected with root diseases and maintain pine savanna stands in historic openings.

d. On approximately 40 acres, thin two-storied mature stands to reduce understory ladder fuels and maintain older trees, especially pines.

On all of the thinning harvests, small-diameter trees not needed for optimum stocking will be removed as wood chips. After the harvest treatments the project area would be treated to reduce accumulations of down wood and deep needle slash by underburning 200 acres and tractor piling and burning 1,000 acres.

e. Release aspen from conifer competition on approximately 16 acres by removing conifers within 150 feet of aspen.

2. Harvest 10 acres of knobcone pine for sale as wood chips. Tractor pile residual slash and re-plant with ponderosa pine.

3. Harvest and re-plant approximately 370 acres of 95–110 year old pine suffering from root disease and bark beetle mortality. Leave healthy white fir, incense-cedar, sugar pine, Douglas-fir and black oak. Remove wood products. Tractor pile residual slash. Re-plant with mixed species in shaded areas, ponderosa pine in open areas. The timber harvest outputs from the entire project are anticipated to be approximately 40–50 thousand CCF (25–30 MMBF) of sawlog products plus approximately 3,000 tons of chipped wood products.

The proposed action includes borax application on stumps to prevent the spread of annosus root disease, but does not include the use of herbicides or pesticides. The project may include the construction of short lengths of temporary road and the closure or decommissioning of other roads.

Lead and Cooperating Agencies

Lead Agency: USDA, Forest Service.

Responsible Official

J. Sharon Heywood, Forest Supervisor, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA 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 Process

The project is included in the Shasta-Trinity National Forest's quarterly schedule of proposed actions (SOPA).

Information on the proposed action will also be posted on the forest Web site, *http://www.fs.fed.us/r5.shastatrinity/projects,* and advertised in the Mt. Shasta Herald. A field trip will be held for interested parties in May of 2005. This notice of intent intimates the scoping process, which guides the development of the environmental impact statement. Comments submitted during this scoping process should be in writing and should be specific to the proposed action. The comments should describe as clearly and completely as possible any issue the commenter has with the proposal. 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.

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 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 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 thus ensuring substantive comments and objections are 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: January 24, 2005.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 05–2767 Filed 2–11–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Mississippi Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Meeting notice for the Southwest Mississippi Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Southwest Mississippi Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393. Topics to be discussed include: general information, possible Title II projects, and the next meeting dates and agendas.

DATES: The meeting will be held on March 22, 2005, from 6 p.m. and end at approximately 9 p.m.

ADDRESSES: The meeting will be held at the Franklin County Public Library, 381 First Street, Meadville, Mississippi.

FOR FURTHER INFORMATION CONTACT: Mary Bell Lunsford, Public Affairs Officer, USDA, Homochitto National Forest, 1200 Hwy. 184 East, Meadville, MS 39653 (601–384–5876)

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff, Committee members and elected officials. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by March 11, 2005, will have the opportunity to address the committee at that session. Individuals wishing to speak or propose agenda items must send their names and proposals to Tim Reed, District Ranger, DFO, 1200 Hwy. 184 East, Meadville, MS 39653.

Dated: February 4, 2005.

Tim Reed,

Designated Federal Officer.

[FR Doc. 05–2748 Filed 2–11–05; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–812]

Furfuryl Alcohol from Thailand: Notice of Extension of Time Limit for Preliminary Results of 2003–2004 Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew Smith at (202) 482–1276, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Background

On August 30, 2004, the Department of Commerce (''the Department'') published a notice of initiation of administrative review of the antidumping duty order on furfuryl alcohol from Thailand covering the period July 1, 2003 through June 30, 2004. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 52857 (August 30, 2004). The preliminary results for this review are currently due no later than April 4, 2005.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

We are currently analyzing complicated sales and cost information that has required numerous supplemental questionnaire responses. In particular, our analysis of input costs, general and administrative expenses, and interest expenses requires additional time and makes it impracticable to complete the preliminary results of this review within the originally anticipated time limit (i.e., April 4, 2005). Therefore, the Department is extending the time limit for completion of the preliminary results to no later than May 4, 2005, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 8, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–599 Filed 2–11–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 9, 2004, the U.S. Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping order covering certain in-shell raw pistachios from Iran. *See Preliminary Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran,* 69 FR 48197 (August 9, 2004) (*Preliminary Results*). The product covered by this order is certain in-shell raw pistachios (pistachios) from Iran as described in the ''Scope of the Review'' section of the **Federal Register** notice. The period of review (POR) is July 1, 2002, through June 30, 2003. We invited parties to comment on our *Preliminary Results.* Based on our analysis of the comments received, we have made changes to the margin calculation. Therefore, the final results differ from the *Preliminary Results.* The final weighted-average dumping margin for the reviewed firm and the producer of the merchandise is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza at (202) 482–3019, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

This review covers sales of pistachios to the United States made by Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company (Nima).

In response to our request for written comments and any additional documentary evidence regarding whether or not, Nima's supplier of pistachios, Razi Domghan Agricultural and Animal Husbandry Company (Razi) did or did not have knowledge that the goods in question were destined for the United States at the time of the sale, on August 23, 2004, we received comments from only one party, Nima. On September 3, 2004, in a memorandum to the file, the Department discussed several inadvertent calculation errors in its preliminary margin calculation that it intended to correct for purposes of these final results. *See* Memorandum to the File through Richard O. Weible, Director, Intended Correction to the Preliminary Margin Calculation, dated September 3, 2004 (Prelim Correction Memo).

On September 8, 2004, the California Pistachio Commission (CPC or petitioner) and Cal Pure Pistachios, Inc. (Cal Pure), an interested party to the instant proceeding, requested a public hearing. On September 16, 2004, in response to our *Preliminary Results,* we received case briefs from Nima, CPC, and Cal Pure. All parties submitted rebuttal briefs on September 22, 2004. We held a public hearing on October 1, 2004. *See* Hearing Transcript, Pistachios from Iran, dated October 1, 2004.

On November 26, 2004, the Department extended fully the time limit, from December 7, 2004, until no later than February 7, 2005, for the final results of the instant administrative review. *See Certain In-Shell Raw Pistachios from Iran: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,* 69 FR 70123 (December 2, 2004).

Scope of the Review

The product covered by the antidumping duty order is raw, in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells, and edible meats from Iran. This merchandise is currently provided for in subheading 0802.50.20.00 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Analysis of Comments Received

All issues raised in case and rebuttal briefs submitted by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated February 7, 2005, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Internet at *http://www.ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes to Nima's margin calculation. The changes are listed below:

1. We applied a profit rate to the producer's, Razi's, cost of production based on Razi's actual profit rate for home market sales during the POR. For purposes of calculating a profit margin for Nima, we used the profit rate from an Iranian pistachio trader, *i.e.*, Fallah, which resold pistachios in Iran during a prior proceeding (*i.e.*, Nima's new shipper review). *See* Memorandum from

Gina K. Lee through Michael P. Martin to Neal M. Halper, Constructed Value Adjustments for Final Results, dated February 7, 2005 (CV Final Memo).

2. For purposes of calculating constructed value, we used Nima's adjusted U.S. indirect selling expenses as a proxy for home market indirect selling expenses. *See* Nima's December 4, 2003, supplemental section A and C questionnaire response (Nima's SQR). *See also* Memorandum to the File, through Abdelali Elouaradia, Program Manager, Analysis Memorandum for the Final Results of Administrative Review of the Antidumping Duty Order on Certain In-Shell Raw Pistachios from Iran: Tehran Negah Nima Trading Company, Inc., dated February 7, 2005 (Final Analysis Memo), at Attachments 1 and 2.

3. We corrected certain ministerial errors alleged by petitioner and Cal Pure (*i.e.*, calculation of Nima's U.S. imputed credit expenses and foreign unit price in U.S. dollars). *See* Final Analysis Memo at Attachment 1.

4. We treated Nima's warehousing expenses (*i.e.*, 60,000 Rials) as direct expenses and, as such, have included these expenses in our calculation of Nima's foreign movement expenses. Upon further review of Nima's questionnaire responses, we find that Nima did incur and pay for warehousing expenses. *See* Nima's SQR at Exhibit 4.1. *See also* Final Analysis Memo at Attachment 1.

Final Results of Review

As a result of our review, we determine that the following weighted-average dumping margin for the exporter/producer combination named below exists for the POR: [1]

Exporter/producer	Weighted-average margin (percent)
Tehran Negah Nima Trading Company, Inc./Razi Domghan Agricultural and Animal Husbandry Company.	18.74

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer-specific assessment rates. To calculate these rates, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. We will direct CBP to assess the appropriate assessment rate against the entered CBP values for the subject merchandise on each of the importer's entries under the relevant order during the POR.

Cash Deposit Requirements

As Nima is the exporter but not the producer of subject merchandise, the Department's final results of review will apply to subject merchandise exported by Nima and produced by Razi. *See* 19 CFR 351.107(b). *See also* accompanying Decision Memo at Comment 2. Therefore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication: (1) For the merchandise exported by Nima and produced by Razi, the cash deposit rate will be 18.74 percent; (2) for the merchandise exported by Nima and produced by Maghsoudi Farms, the cash deposit rate will be 144.05 percent; (3) for subject merchandise exported by Nima but not produced by Razi or Maghsoudi Farms, the cash deposit rate will be the ''all others'' rate established in the original less than fair value (LTFV) investigation (*see* 51 FR 25922 (July 17, 1986)); (4) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (5) if neither the exporter nor producer is a firm covered in this review or the original investigation, the cash deposit rate for all other producers or exporters of the subject merchandise will continue to be 184.28 percent. This rate is the ''All Others'' rate from the final determination in the LTFV investigations, which reflects the amount of export subsidies found in the final countervailing duty determination in the investigation subtracted from the dumping margin found in the LTFV determination. *See Certain In-Shell Raw Pistachios: Final Determination of Sales at Less Than Fair Value,* 51 FR 18919 (May 23, 1986); and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; In-Shell Raw Pistachios from Iran,* 51 FR 8344 (March 11, 1986). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 7, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Issues

1. Razi Domghan Agricultural and Animal Husbandry Company's Knowledge of the U.S. Sale of Pistachios
2. Application of Combination Rate for Tehran Negah Nima Trading Company, Inc.'s U.S. Sales of Pistachios Produced by Razi Domghan Agricultural and Animal Husbandry Company
3. *Bona Fides* of Tehran Negah Nima Trading Company, Inc.'s U.S. Sale
4. Calculation and Application of Constructed Value Profit
5. Application of Total Adverse Facts Available
6. Ministerial Error Allegations Relating to the Calculation of Nima's Indirect Selling and Credit Expenses, and Foreign Unit Price in U.S. Dollars

[FR Doc. E5–596 Filed 2–11–05; 8:45 am]

BILLING CODE 3510–DS–P

[1] For purposes of these final results, the Department has determined to apply the weighted-average dumping cash deposit rates to subject merchandise exported by Nima and produced by Razi. *See* accompanying Decision Memo at Comment 2.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Individual Quick Frozen Red Raspberries from Chile: Notice of Extension of Time Limit for 2003–2004 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Cole Kyle, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3813 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On August 30, 2004, the Department published a notice of initiation of administrative review of the antidumping duty order on individual quick frozen red raspberries from Chile, covering the period July 1, 2003, through June 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, (69 FR 52857). The preliminary results for this review are currently due no later than April 4, 2005.

Extension of Time Limits for Preliminary Results

We are currently analyzing sales information provided by the respondents in this review. Because the Department requires additional time to review, analyze, and possibly verify the sales information and to issue supplemental questionnaires, if necessary, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by April 4, 2005). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than July 29, 2005, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 8, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–597 Filed 2–11–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–475–824

Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 9, 2004, the U.S. Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping order covering stainless steel sheet and strip in coils from Italy. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 69 FR 48205 (August 9, 2004) (Preliminary Results). The period of review (POR) is July 1, 2002, through June 30, 2003. We invited parties to comment on our *Preliminary Results*. Based on our analysis of the comments received, we have made a change to the margin calculation. Therefore, the final results differ from the *Preliminary Results*. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza at (202) 482–3019, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

This review covers ThyssenKrupp Acciai Speciali Terni S.p.A. and its U.S. affiliate, ThyssenKrupp AST USA, Inc. (TKAST USA) (collectively, TKAST or respondent).

In response to our *Preliminary Results*, on September 8, 2004, we received case briefs from TKAST and Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization (collectively, petitioners). Both parties submitted rebuttal briefs on September 15, 2004. However, on September 22, 2004, the Department rejected and returned TKAST's September 15, 2004, rebuttal brief as it contained untimely new factual information. Pursuant to the Department's request, TKAST filed a revised version of its rebuttal brief on September 24, 2004. Parties did not request a public hearing.

On November 26, 2004, the Department extended fully the time limit, from December 7, 2004, until no later than February 7, 2005, for the final results of the instant administrative review. *See Stainless Steel Sheet and Strip in Coils from Italy: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 69 FR 70124 (December 2, 2004).

Scope of the Order

For purposes of this review, the products covered by the order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025,

[1] Due to changes to the HTSUS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of this order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to American Iron and Steel Institute (AISI) grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.''[6]

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo'' is the proprietary grade of Hitachi Metals America, Ltd.

The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5''[7] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[8]

Analysis of Comments Received

All issues raised in case and rebuttal briefs submitted by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated February 7, 2005, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at www.ia.ita.doc.gov. The paper copy and electronic version of the Decision Memo are identical in content.

Change Since the Preliminary Results

Based on our analysis of comments received, we have made a change to TKAST's margin calculation by deducting rather than adding billing adjustments to TKAST's home market price.

[7] ''GIN5'' is the proprietary grade of Hitachi Metals America, Ltd.

[8] ''GIN6'' is the proprietary grade of Hitachi Metals America, Ltd.

Final Results of Review

As a result of our review, we determine that the following weighted–average dumping margin exists for the POR:

Manufacturer/Exporter	Weighted–Average Margin (percent)
ThyssenKrupp Acciai Speciali Terni S.p.A.	3.72

Assessment

The Department shall determine, and U.S. Bureau of Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer–specific assessment rates. To calculate these rates, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. We will direct CBP to assess the appropriate assessment rate against the entered CBP values for the subject merchandise on each of the importer's entries under the relevant order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of SSSS in coils from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) the cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.23 percent. This rate is the ''All Others'' rate from the amended final determination in the LTFV investigations. *See Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 40567 (July 27, 1999).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 7, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Issues

1. Treatment of Premiums Paid by ThyssenKrupp AG to Repurchase Shares Held by the Islamic Republic of Iran (Iran)

2. Application of Partial Adverse Facts Available for Certain Components of ThyssenKrupp Acciai Speciali Terni S.p.A.'s Reported Standard Costs

3. Deduction of Technical Service Expenses from U.S. Price

4. Treatment of Non–Dumped Sales

5. Ministerial Error Relating to the Addition of Billing Adjustments to Home Market Price

[FR Doc. E5–598 Filed 2–11–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, Matthew Renkey, John Conniff or Kit Rudd, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, (202) 482–2312, (202) 482–1009, or (202) 482–1385, respectively.

Final Determination

We determine that certain tissue paper products from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV'') as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Final Determination Margins'' section of this notice.

SUPPLEMENTARY INFORMATION:

Case History

On September 21, 2004, the Department of Commerce (''the Department'') published its preliminary determination of sales at LTFV, affirmative preliminary determination of critical circumstances, and postponement of the final determination in the antidumping investigation of certain tissue paper products from the PRC. *See Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China: Notice of Preliminary Determinations of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination for Certain Tissue Paper Products*, 69 FR 56407 (September 21, 2004) (''*Preliminary Determination*'').

During the investigation, the Department examined sales information from two exporters of subject merchandise that were selected as Mandatory Respondents.[1] In addition, 12 companies requested separate rates and we refer to them, collectively, as the Section A Respondents.[2] We invited interested parties to comment on our Preliminary Determination. Based on our analysis of the comments we received, we have made changes to our determinations for the two Mandatory Respondents. As a result of those changes, the rate assigned to companies which received a separate rate also changed.

On November 24, 2004, the Department issued a memorandum in response to ministerial error allegations filed by China National and Petitioners[3] on September 24, 2004, and October 1, 2004. *See Antidumping Duty Investigation of Certain Tissue Paper Products from the People's Republic of China (''China''): Analysis of Allegations of Ministerial Errors*. On December 1, 2004, China National again filed comments regarding alleged ministerial errors. The Department replied to these ministerial error allegations via a letter dated January 3, 2005. The Department conducted verification of the Mandatory Respondents: Fujian Naoshan from November 1–7, 2004, and China National from December 6–17, 2004. *See* the ''Verification'' section below for additional information.

On January 12, 2005, Mandatory Respondents and Petitioners submitted case briefs; on January 18, 2005, those same parties submitted rebuttal briefs. Also on January 18, 2005, two Section A Respondents filed case briefs; no party filed a rebuttal brief in response to these case briefs. On January 24, 2005, the Department held a public hearing in accordance with section 351.310(d)(l) of the Department's regulations. Representatives for the Mandatory Respondents and Petitioners attended.

[1] China National Aero-Technology Import & Export Xiamen Corporation (''China National'') and Fujian Naoshan Paper Industry Group Co., Ltd. (''Fujian Naoshan'').

[2] Fujian Xinjifu Enterprises, Co., Ltd. (''Fujian Xinjifu''), Qingdao Wenlong Co., Ltd. (''Qingdao Wenlong''), Hunan Winco Light Industry Products Import & Export Co., Ltd. (''Hunan Winco''), Fuzhou Light Industry Import & Export Co., Ltd. (''Fuzhou Light''), Fujian Nanping Investment & Enterprise Co. (''Fujian Nanping''), Guilan Qifeng Paper Co. Ltd. (''Guilin Qifeng''), Ningbo Spring Stationary Limited Company (''Ningbo Spring''), Everlasting Business & Industry Corporation, Ltd. (''Everlasting''), Anhui Light Industrial Import & Export Co., Ltd. (''Anhui Light''), Samsam Production Limited & Guangzhou Baxi Printing Products Limited (''Samsam''), Max Fortune Industrial Limited (''Max Fortune''), and Fuzhou Magicpro Gifts Co., Ltd. (''Magicpro'').

[3] Seaman Paper Company of Massachusetts Inc.; Eagle Tissue LLC; Flower City Tissue Mills Co.; Garlock Printing & Converting, Inc.; Paper Service Ltd.; Putney Paper Co., Ltd.; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO, CLC (collective ''Petitioners'').

Mandatory Respondents

On October 18, 2004, Petitioners filed pre-verification comments regarding Fujian Naoshan. On October 19, 2004, Fujian Naoshan filed its sales reconciliation documentation. China National filed revised financial statements on October 21, 2004, and on October 25, 2004, it filed dye-specific factors of production (''FOP'') information. On October 29, 2004, China National submitted its sales reconciliation documentation. On November 10, 2004, China National, Fujian Naoshan, and Petitioners submitted information regarding surrogate values. On November 12, 2004, China National submitted comments on surrogate value information. On November 17, 2004, Petitioners submitted comments on China National's November 12, 2004, submission. On November 29, 2004, Petitioners replied to surrogate value comments submitted by Fujian Naoshan. On December 2, 2004, Petitioners submitted pre-verification comments for China National.

On December 21, 2004, China National submitted the minor corrections that had been presented at verification. On January 7, 2005, Petitioners submitted information regarding a potential undisclosed affiliation for Fujian Naoshan, and supplemented this information with a January 10, 2005, filing. On January 12, 2005, China National submitted an affidavit from one of its counsel from a Chinese law firm concerning certain issues relating to China National's verification. Petitioners further clarified the information in their January 7 and January 10, 2005 filings with a letter submitted on January 14, 2005. On January 14, 2005, Fujian Naoshan submitted a reply to Petitioners' January 7 and January 10, 2005, filings. (Fujian Naoshan's additional arguments regarding this issue were included in its rebuttal brief.) Also on January 14, 2005, China National submitted an affidavit from an industry source regarding tissue paper basis weights. On January 18, 2005, China National filed a revised FOP database, pursuant to a request from the Department.

Section A Respondents

On October 18, 2004, Magicpro notified the Department that it would no longer participate in the investigation. On October 21, 2004, Fujian Xinjifu notified the Department that it would not participate in the verification of its section A response. On October 25, 2004, Hunan Winco submitted new factual information regarding its

separate rates claim. On January 14, 2005, a certain Section A Respondent submitted an affidavit regarding certain information that had been placed on the record concerning Fujian Naoshan.

Scope Comments

Parties did not submit comments regarding scope during the course of this investigation. However, the Department issued a scope ruling based on a request from CSS Industries, Inc. that considered whether jumbo rolls should be included within the scope of this investigation. The Department determined in its ruling that jumbo rolls were not covered by this investigation. *See* the memorandum entitled ''Final Scope Ruling: Antidumping Duty Order on Certain Tissue Paper Products From the People's Republic of China (A–570–894); CSS Industries, Inc.,'' dated December 1, 2004.

Scope of Investigation

The tissue paper products subject to investigation are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this investigation may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this investigation is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this investigation may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this investigation does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (''HTSUS''). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of these investigations is dispositive.

Excluded from the scope of this investigation are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Analysis of Comments Received

The issue of applying total adverse facts available (''AFA'') raised in the case and rebuttal briefs by parties in this investigation are addressed in the *Memorandum to Barabara E. Tillman, Acting Deputy Assistant Secretary for Import Administration from James C. Doyle, Director, AD/CVD Operations, Office 9, Regarding Application of Total Adverse Facts Available to China National Aero-Technology Import and Export Xiamen Corporation (''China National'') in the Final Determination of Sales at Less than Fair Value: Certain Tissue Paper Products from the People's Republic of China (''PRC'') (''China National AFA Memo''),* and the *Memorandum to Barabara E. Tillman, Acting Deputy Assistant Secretary for Import Administration from James C. Doyle, Director, AD/CVD Operations, Office 9, Regarding Application of Total Adverse Facts Available to Fujian Naoshan (''Naoshan'') in the Final Determination of Sales at Less than Fair Value: Certain Tissue Paper Products from the People's Republic of China* (''*PRC*'') (''*Fujian Naoshan AFA Memo*''), both dated February 3, 2005, and which are hereby adopted by this notice. All other issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, dated February 3, 2005, which is also hereby adopted by this notice (''*Issues and Decision Memorandum*''). A list of the issues which parties raised and to which we respond in the *Issues and Decision Memorandum* is attached to this notice as an Appendix. The *Issues and Decision Memorandum* is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the memorandum are identical in content.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the Mandatory Respondents for use in our final determination. *See* the Department's verification reports on the record of this investigation in the CRU with respect to China National and Fujian Naoshan. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Period of Investigation

The period of investigation (''POI'') is July 1, 2003, through December 31, 2003.

This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition. *See* section 351.204(b)(1) of the Department's regulations.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) India is at a level of economic development comparable to that of the PRC; (2) Indian manufacturers produce comparable merchandise and are significant producers of certain tissue paper products; (3) India provides the best opportunity to use appropriate, publicly available data to value the FOPs. *See Preliminary Determination.* We received no comments from interested parties concerning our selection of India as the surrogate country. For the final determination, we have determined to continue to use India as the surrogate country and, accordingly, have calculated the PRC-wide rate using Indian data. We have obtained and relied upon publicly available information wherever possible.

Separate Rates

In the *Preliminary Determination*, the Department found that several companies which provided responses to Section A of the antidumping questionnaire were eligible for a rate separate from the PRC-wide rate. No party submitted comments challenging these separate rate determinations, so we continue to find that those companies remain eligible for a separate rate. For a complete listing of all the companies that received a separate rate, *see* the ''Final Determination Margins'' section below.

The Department found that one Section A Respondent, Hunan Winco, did not provide sufficient information to support its request for a separate rate. Accordingly, Hunan Winco has not overcome the presumption that it is part of the PRC-wide entity and its entries will be subject to the PRC-wide rate. *See*

Issues and Decision Memo at Comment 5. Magicpro, another Section A Respondent, stated that it was withdrawing from the investigation. Section A Respondent Fujian Xinjifu stated that it would not participate in the verification of its response. As such, these two companies did not overcome the presumption that they are part of the PRC-wide entity, and their entries will be subject to the PRC-wide rate. We have also found that China National and Fujian Naoshan are not entitled to separate rates. *See* the ''Facts Available'' section below.

The margin we calculated in the *Preliminary Determination* for the companies receiving a separate rate was 91.32 percent. The rates of the selected Mandatory Respondents have changed since the *Preliminary Determination* as we are applying total AFA to them. The rate for Section A Respondents that are eligible for a separate rate is thus now the same as the PRC-wide rate, which is 112.64 percent. This rate was calculated by revising the petition margin and is the only rate available for use in this final determination. *See* the ''PRC-Wide Rate'' and ''Margins for Cooperative Exporters Not Selected'' sections below, and the *Memorandum from Kit L. Rudd, Case Analyst to the File Through Alex Villanueva, Program Manager, Regarding the Calculation and Corroboration of the PRC-Wide Rate*, (''*PRC-Wide Rate Calculation Memo*'').

Critical Circumstances

As described below in the ''Facts Available'' section, we are applying total AFA to China National and Fujian Naoshan. As part of total AFA for China National and Fujian Naoshan, we determine that they are not eligible for separate rates and are therefore part of the PRC-wide entity. *See Fujian Naoshan AFA Memo* and *China National AFA Memo*. No party submitted comments challenging the Department's critical circumstances finding in the *Preliminary Determination* with regard to the PRC-wide entity. As such, the Department continues to find that critical circumstances exist for the PRC-wide entity, including China National and Fujian Naoshan. Additionally, for this final determination we continue to find that critical circumstances do not exist with regard to imports of certain tissue paper products from the PRC for all the Section A Respondents granted a separate rate. For further details regarding the Department's critical circumstances analysis from the *Preliminary Determination, see* the *Memo from Edward C. Yang, Office Director to Jeffrey A. May, Deputy Assistant Secretary for Import Administration, Regarding the Antidumping Duty Investigation of Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China (the ''PRC'')—Partial Affirmative Preliminary Determination of Critical Circumstances for Importers of Certain Tissue Paper Products and Crepe Paper Products from the PRC*, dated September 21, 2004.

The PRC-Wide Rate

Because we begin with the presumption that all companies within a non-market economy (''NME'') country are subject to government control and because only the companies listed under the ''Final Determination Margins'' section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the ''Final Determination Margins'' section below (except as noted). The information used to calculate this PRC-wide rate was corroborated with some small changes in accordance with section 776(c) of the Act. *See PRC-Wide Rate Calculation and Corroboration Memo, China National AFA Memo* and *Fujian Naoshan AFA Memo*.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 776(b) of the Act states that if the administering authority finds that an interested party has not acted to the best of its ability to comply with a request for information, the administering authority may, in reaching its determination, use an inference that is adverse to that party. The adverse inference may be based upon: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record.

Total AFA for China National

For the final determination, the Department is applying facts available to China National because it failed to provide verifiable FOP data and basis weight information that the Department had requested, in accordance with section 776(a)(2)(D) of the Act. Also, China National failed to report sales of subject merchandise to the United States made by one of its affiliates, in accordance with sections 776(a)(2)(A) and (B) of the Act. Moreover, certain information regarding the financial statements of China National's three affiliated companies involved in the production and sale of subject merchandise calls into question the reliability of the data that would be used to calculate a margin.

Furthermore, in accordance with section 776(b) of the Act, the Department found that China National failed to cooperate to the best of its ability to comply with the Department's request for information, and, therefore, finds an adverse inference is warranted in determining the facts otherwise available. We also have determined that China National is not eligible for a separate rate. For a complete discussion of this matter, *see* the *China National AFA Memo.*

Total AFA for Fujian Naoshan

For the final determination, the Department is applying facts available to Fujian Naoshan because it failed to disclose information regarding a possible relationship between it and another exporter of subject merchandise in China, in accordance with sections 776(a)(2) (A) through (D) of the Act.

Furthermore, in accordance with section 776(b) of the Act, the Department found that Fujian Naoshan failed to cooperate to the best of its ability to comply with the Department's request for information, and, therefore, finds an adverse inference is warranted in determining the facts otherwise available. We also have determined that Fujian Naoshan is not eligible for a separate rate. For a complete discussion of this matter, *see* the *Fujian Naoshan AFA Memo*.

Changes Since the Preliminary Determination

Based on our findings at verification, additional information placed on the

record of this investigation, and analysis of comments received, we have made changes that impact the dumping margins in this proceeding. For discussion of these changes, *see Issues and Decision Memo, China National AFA Memo, Fujian Naoshan AFA Memo*, and *PRC-Wide Rate Calculation and Corroboration Memo*.

Margins for Section A Respondents Receiving a Separate Rate

As we are applying total AFA to the Mandatory Respondents, those exporters who responded to Section A of the Department's antidumping questionnaire, established their claim for a separate rate, and had sales of the merchandise under investigation, but were not selected as Mandatory Respondents in this investigation, will receive the same rate as the PRC-wide rate, which is 112.64 percent. *See PRC-Wide Rate Calculation and Corroboration Memo*. This rate was calculated by revising the petition margin and is the only rate available for use in this final determination. *See*, *e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Crepe Paper From The People's Republic of China*, 69 FR 70233 (December 3, 2004).

Surrogate Values

The Department made changes to the surrogate values used to calculate the PRC-wide rate from the *Preliminary Determination*. For a complete discussion of the surrogate values, *see Issues and Decisions Memorandum* at Comment 2.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

Company	Weighted-average margin (percent)
PRC Wide Rate	112.64

CERTAIN TISSUE PAPER PRODUCTS FROM PRC SECTION A RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
Qingdao Wenlong Co., Ltd. (''Qingdao Wenlong'')	112.64
Fujian Nanping Investment & Enterprise Co. (''Fujian Nanping'')	112.64

CERTAIN TISSUE PAPER PRODUCTS FROM PRC SECTION A RESPONDENTS—Continued

Manufacturer/exporter	Weighted-average margin (percent)
Fuzhou Light Industry Import & Export Co., Ltd. (''Fuzhou Light'')	112.64
Guilin Qifeng Paper Co. Ltd. (''Guilin Qifeng'')	112.64
Ningbo Spring Stationary Limited Company (''Ningbo Spring'')	112.64
Everlasting Business & Industry Corporation, Ltd. (''Everlasting'')	112.64
Anhui Light Industrial Import & Export Co., Ltd. (''Anhui Light'')	112.64
Samsam Production Limited & Guangzhou Baxi Printing Products Limited (''Samsam'')	112.64
Max Fortune Industrial Limited (''Max Fortune'')	112.64

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of subject merchandise from the Section A Respondents that received a separate rate, that are entered, or withdrawn from warehouse, for consumption on or after the September 21, 2004, the date of publication of the *Preliminary Determination*. However, with respect to all other PRC exporters, the Department will continue to direct CBP to suspend liquidation of all entries of certain tissue paper products from the PRC that are entered, or withdrawn from warehouse, on or after 90 days before September 21, 2004, the date of publication of the *Preliminary Determination*. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

United States International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: February 3, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

Appendix

Comment 1: Treatment of Mixed Packages
Comment 2: Calculation of the Surrogate Financial Ratios
Comment 3: Request for Initiation of Circumvention Inquiry
Comment 4: Section A Rate—Max Fortune Industrial Limited (''Max Fortune'')
Comment 5: Section A Rate—Hunan Winco Light Industry Product Import & Export Co. Ltd. (''Hunan Winco'')

[FR Doc. E5–595 Filed 2–11–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Notice of Extension of Time Limit for Final Results of Countervailing Duty Administrative Review: Honey From Argentina

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Dara Iserson or Thomas Gilgunn at (202) 482–4052 and (202) 482–4236, respectively; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On January 15, 2004, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on Honey from Argentina with respect to the Government of Argentina (GOA). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 69 FR 3117 (January 22, 2004). The period of review (POR) is January 1, 2003, through December 31, 2003. On December 13, 2004, the Department released the preliminary results. *See Honey from Argentina: Preliminary Results of Countervailing Duty Administrative Review,* 69 FR 7645 (December 21, 2004).

Statutory Time Limits

Section 351.213(h)(1) of the regulations requires the Department to issue the preliminary results of review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and the final results of an administrative review within 120 days after the date on which notice of preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete and review within the aforementioned specified time limits, section 351.213(h)(2) allows the Department to extend the 245-day-period to 365 days and to extend the 120-day period to 180 days.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and section 351.213(h)(2) of the regulations, due to the complexity of issues related to certain loan programs and because the Department intends to verify the GOA's questionnaire responses, the Department finds that it is not practicable to complete this review by the current deadline of April 20, 2005. Therefore, the Department is extending the deadline for completion of the final results of the administrative review of the countervailing duty order on honey from Argentina by 60 days. The final results of the review will now be due no later than June 19, 2005, which is 180 days after the publication of the preliminary results. This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: February 7, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–2739 Filed 2–11–05; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020805B]

New England Fishery Management Council; Public Meetings

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel in March 2005. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Wednesday, March 2, 2005, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton, 407 Squire Road, Revere, MA 02151; telephone: (781) 284–7200.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Scallop Advisory Panel will meet with the Scallop Plan Development Team to discuss issues related to safety such as, casualty trends in the fishing industry, and regulations that have elevated safety risk and potential solutions. They will also discuss alternative approaches for making controlled access area allocations; access area mortality targets, rotation objectives and seasonal access programs. Also on the agenda will be whether or not the Hudson Canyon Area should continue to be a controlled access area in 2006. They will also discuss impediments and potential solutions to landing scallops for value-added processing. Finally, they will discuss a research set aside program and scallop research priorities.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least five days prior to the meeting dates.

Dated: February 9, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–590 Filed 2–11–05; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Challenge Grant Application Instructions using the Corporation's Electronic Application System, eGrants. The Corporation is also soliciting comments concerning a new approval of the Challenge Grant

Application Instructions using the Government-wide application system, Grants.gov. The use of the Grant.gov system will be dependent upon the development of the system to meet the Corporation's individualized needs. One set of application instructions is necessary for current and prospective grantees to apply for a Challenge Grant. The decision on how to apply, via eGrants or *Grants.gov*, will be up to the individual applicant. Completion of the Challenge Grant Application Instructions is required to be considered for funding.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 15, 2005.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of Grants Policy and Operations; Attention Ms. Marci Hunn, Program Officer; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2787, Attention Ms. Marci Hunn, Program Officer.

(4) Electronically through the Corporation's e-mail address system: *challengegrants@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Marci Hunn, (202) 606–5000, ext. 420 or by e-mail at *challengegrants@cns.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Description: The purpose of these Challenge Grants is to assist nonprofit organizations in securing previously untapped sources of private funds to build sustainable national and community service programs. Organizations receiving funds must either greatly expand services by engaging citizens in meeting community needs or offer new services through expanded citizen engagement.

Background: The Challenge Grant Application is completed by applicant organizations interested in supporting a Challenge Grant program. The application is completed electronically by using the Grants.gov web based system or the Corporation's web-based system, eGrants.

Current Action: The Corporation seeks to renew and revise application instructions for Challenge Grant Application Instructions using the eGrants system. When revised, the application will include additional instructions to clarify narrative and work plan sections; will contain an updated list of ''Service Categories'' used by applicants to identify the types of needs the national service participants will meet; and will contain current references used in the grants management system. The application will otherwise be used in the same manner as the existing application.

The Corporation also seeks approval for new application instructions for applicants to apply using the Grants.gov online application system. The Grants.gov system has been developed for the Corporation in a way that will meet the same requirements as our eGrants system. The Grants.gov application instructions ensure that applicants are applying with the same instructions and character limits that are currently used on the Corporation's eGrants system.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Challenge Grant Application Instructions.

OMB Number: none.

Agency Number:.

Affected Public: Eligible applicants to the Corporation for funding for Challenge Grants.

Total Respondents: 40.

Frequency: On occasion.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 4, 2005.

Amy Mack,

Chief of Staff, Office of Chief Executive Officer.

[FR Doc. 05–2749 Filed 2–11–05; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the Application Instructions relating to its proposed new competition for making new awards for training and technical assistance (T/TA) support to national service programs. The competition is open to current and prospective T/TA providers. Completion of the cooperative agreement award application is required to be considered for, or obtain a T/TA cooperative agreement with the Corporation. Copies of the information collection request can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office

listed in the **ADDRESSES** section by April 15, 2005.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of Leadership Development and Training; Attention Mr. David Bellama, Associate Director, Room 9623; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 208–4151, Attention Mr. David Bellama, Associate Director.

(4) Electronically through the Corporation's e-mail address system: *dbellama@cns.gov.*

FOR FURTHER INFORMATION CONTACT: David Bellama, (202) 606–5000, ext. 483, or by e-mail at *dbellama@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background

The application to be published by the Corporation's Office of Leadership Development and Training will be completed by applicant organizations interested in providing T/TA services to the Corporation's grantee programs. This application will be completed electronically using the Corporation's web-based grants management system, eGrants.

Current Action

The Corporation is seeking approval of the document entitled 2005 Application Instructions: Training and Technical Assistance Cooperative Agreements currently approved through emergency clearance. The application includes submission and compliance requirements, application instructions, selection criteria, and reporting requirements for applications selected for awards. The Application Instructions also include several appendices that require the following:

- SF424 Facesheet Instructions and Facesheet
- Assurances and Certifications
- SF424A Budget Instructions
- Survey on Ensuring Equal Opportunity

This emergency clearance for this information collection will expire on 5/31/05.

Type of Review: New; currently approved through emergency clearance.

*Agency:*Corporation for National and Community Service.

Title: 2005 Application Instructions: Training and Technical Assistance Cooperative Agreements.

OMB Number: 3045–0105.

Agency Number: None.

Affected Public: Current and prospective T/TA providers.

Total Respondents: 75.

Frequency: Once in three years.

Average Time Per Response: Averages 80 hour for preparing an application.

We expect to select approximately 15 T/TA providers for cooperative agreements. These 15 providers will prepare budget and activity projections at the beginning of the budget period (usually one year) and report semi-annually on actual activities and funds expended. It is anticipated that they will spend approximately 12 hours on the budget/activity projection and 34 hours each per semi-annual report, or 80 hours each per year.

The level of burden for both the application and the periodic budget planning and reporting is attributable to the extensive, national scope of the services that will need to be described in the application and the subsequent planning and reporting documents. The organizations selected for cooperative agreements are expected to provide materials and services that will serve Corporation grantees and subgrantees regardless of size (large non-profit institution, small community organization), type of program (Senior Corps, AmeriCorps, state or national parent organization, urban, rural, tribal), geographic location (east coast, west coast, U.S. territory, multi-site, multi-state), or experience (veteran program or new start-up).

Estimates for the above time burdens were determined by consulting a sample of current and potential respondents.

Estimated Total Burden Hours: 7200.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 7, 2005.

Gretchen Van Der Veer,

Director, Office of Leadership Development and Training.

[FR Doc. 05–2750 Filed 2–11–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement for Navy Air-To-Ground Training at Avon Park Air Force Range, Florida

AGENCY: Department of the Navy, DoD.

ACTION: Announcement of public hearings.

SUMMARY: Pursuant to Section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations Parts 1500–1517), the U.S. Department of the Navy (Navy) has prepared a Draft Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of utilizing Avon Park Air Force Range (APAFR), Florida, as a location for high-explosive (HE) and inert/practice air-to-ground ordnance training for East Coast carrier-based strike/fighter aviation squadrons. Squadrons would use APAFR in combination with other available air-to-ground range assets to meet the operational requirements of its Fleet Readiness Training Program (FRTP). FRTP air-to-ground training will encompass operations associated with Navy integrated and sustainment level training exercises and combat certification. The Draft EIS focuses on air-to-ground training alternatives within APAFR. These alternatives encompass varying mixtures of ordnance types among different impact areas within APAFR.

This notice is to announce public hearings for the Draft EIS. An open information session will precede the scheduled public hearing and will allow individuals to review the data presented in the Draft EIS. Navy representatives will be available during the information session to clarify information related to the Draft EIS. The information session of the hearing is scheduled from 7 p.m. to 7:45 p.m., followed by a formal public hearing from 7:45 p.m. to 9 p.m.

DATES: The meeting dates are as follows:

1. March 1, 2005, 7 p.m. to 9 p.m., Frostproof, FL.

2. March 2, 2005, 7 p.m. to 9 p.m., Sebring, FL.

3. March 3, 2005, 7 p.m. to 9 p.m., Avon Park, FL.

ADDRESSES: Public hearings locations are as follows:

1. Frostproof—Frostproof High School (Cafeteria), 1000 N. Palm Street, Frostproof, FL 33843.

2. Sebring—Sebring Civic Center (behind Public Library) 355 West Center Avenue, Sebring, FL 33870.

3. Avon Park—City of Avon Park Community Center, 310 West Main Street, Avon Park, FL 33825.

FOR FURTHER INFORMATION CONTACT: Mr. Will Sloger, Southern Div., Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, SC 29419–9010; telephone (843) 820–5797; facsimile (843) 820–7472.

SUPPLEMENTARY INFORMATION: The proposed action is to add to APAFR's capabilities to allow it to conduct all components of ''air-to-ground ordnance delivery and training'' of integrated and sustainment levels of the FRTP at the range, a critical element of which is delivery of HE ordnance. Training would originate from afloat Navy Carrier Strike Groups operating in either the Atlantic Ocean or the Gulf of Mexico. FRTP training exercises are typically conducted three times a year, but depending on world conditions and military requirements, up to six exercises could occur annually. Although unlikely, there is a remote possibility that APAFR could be utilized as the sole range for the delivery of HE munitions for the FRTP over the course of a given year. This would be the exception rather than the rule. Each exercise would use the range for 20 days, resulting in Navy specific use of the range for as many as 60 days during a typical year, up to a maximum of 120 days. The purpose of the proposed action is to improve and enhance the Atlantic Fleet's depth of range resources for FRTP, and, consequently, increase its flexibility to conduct training. The Atlantic Fleet needs to fulfill its statutory mission to have combat-capable air forces ready to deploy worldwide. The Navy is the lead agency for the proposed action with the U.S. Department of the Air Force (Air Force) serving as cooperating agency.

In the Draft EIS, the Navy initially identifies nine candidate ranges for conducting all components of air-to-ground training exercises associated with the FRTP. Two of these ranges (Eglin Air Force Base and the Navy's Pinecastle Range, both in Florida) do not meet the purpose of the proposed action to enhance the depth of available resources. These ranges currently support all components of air-to-ground ordnance delivery, including use of explosive ordnance, and training. Six of the remaining seven (Rodman Bombing Range, Florida; Lake George Bombing Range, Florida; Townsend Bombing Range, Georgia; Dare County Bombing Range, North Carolina; Cherry Point Range Complex, North Carolina; and Camp Shelby Range Complex, Mississippi) candidates fail to fully meet the aircrew training enhancement objectives used to screen the ranges.

Six air-to-ground training alternatives within APAFR are analyzed in detail in the Draft EIS. The alternatives involve using different combinations of target ranges at APAFR. The preferred alternative would use a range identified as the Alpha Plus range for air-to-ground training. This alternative minimizes impacts to endangered species and their habitat on APAFR, as well as other operations and activities on the range.

The Draft EIS has been distributed to various Federal, state, and local agencies, as well as other interested individuals and organizations. In addition, copies of the Draft EIS have been distributed to the following libraries for public review:

1. Avon Park Library, 100 North Museum Avenue, Avon Park, FL 33825.

2. Maxcy Memorial Library, 15 North Magnolia, Frostproof, FL 33843.

3. Sebring Public Library, 319 W Center Ave, Sebring, FL 33870.

4. Lakeland Public Library, 100 Lake Morton Dr, Lakeland, FL 33801.

An electronic copy of the Draft EIS is also available for public viewing at *http://www.avonpark.ene.com.* A limited number of single copies of the Draft EIS, in paper copy or on compact disk, and Executive Summary are available upon request by contacting Mr. Will Sloger at (843) 820–5797.

Federal, State, and local agencies, as well as interested parties are invited and urged to be present or represented at the hearings. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the Draft EIS and will be responded to in the Final FEIS. Equal weight will be given to both oral and written statements.

In the interest of available time, and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing or mailed or faxed to: Commander, Southern Division Naval Facilities Engineering Command, Attn: Mr. Will Sloger (Code ES12), P.O. Box 190010, North Charleston, SC 29419–9010, telephone (843) 820–5797, facsimile (843) 820–7472.

All written comments postmarked by March 14, 2005, will become a part of the official public record and will be responded to in the Final EIS.

Dated: February 8, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–2817 Filed 2–11–05; 8:45 am]

BILLING CODE 3810–FF–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 16, 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 8, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Tech-Prep Demonstration Grants.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 3,200.

Abstract: Section 207 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Pub. L. 105–332) authorizes grants to consortia to carry out tech-prep education programs that involve the location of a secondary school on the campus of a community college. This collection solicits applications for grant funding from eligible applicants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 2669. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–589 Filed 2–11–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Overview Information; Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling

Notice inviting applications for new awards for fiscal year (FY) 2005.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.129B.

Dates:

Applications Available: February 14, 2005.

Deadline for Transmittal of Applications: March 24, 2005.

Deadline for Intergovernmental Review: May 23, 2005.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

Estimated Available Funds: $3,150,000.

Estimated Range of Awards: $125,000–$150,000.

Estimated Average Size of Awards: $137,500.

Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priority: This priority is from the notice of final priority for this program, published in the **Federal Register** on January 15, 2003 (68 FR 2166). This priority is designed to increase the number of rehabilitation counseling programs that provide experiential activities for students, such as formal internships, practicum agreements, and other partnership activities with State vocational rehabilitation (VR) agencies. This priority supports a close relationship between the educational institution and the State VR agency by creating or increasing ongoing collaboration in order to increase the number of graduates who seek employment in State VR agencies.

Absolute Priority: For FY 2005, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Partnership With the State VR Agency

This priority supports projects that will increase the knowledge of students of the role and responsibilities of the VR counselor and of the benefits of counseling in State VR agencies. This priority focuses attention on and intends to strengthen the unique role of rehabilitation educators and State VR agencies in the preparation of qualified VR counselors by increasing or creating ongoing collaboration between institutions of higher education and State VR agencies.

Projects funded under this priority must include within the degree program information about and experience in the State VR system. Projects must include partnering activities for students with the State VR agency including experiential activities, such as formal internships or practicum agreements. In addition, experiential activities for students with community-based rehabilitation service providers are encouraged.

Projects must include an evaluation of the impact of project activities.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds: $3,150,000.
Estimated Range of Awards: $125,000–$150,000.
Estimated Average Size of Awards: $137,500.
Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Training program (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129B.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ × 11,″ on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: February 14, 2005.

Deadline for Transmittal of Applications: March 24, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 23, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor

will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or by hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129B), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.129B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and 34 CFR 386.20 and are in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are the geographical distribution of projects in each Rehabilitation Training program category in the country (34 CFR 385.33(a)) and the past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and attainment of established project objectives (34 CFR 385.33(b)).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The Rehabilitation Services Administration's (RSA) Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages.

The goal of this Rehabilitation Long-Term Training program is to increase the number of qualified vocational rehabilitation counselors working in State vocational rehabilitation agencies or related agencies. Seventy-five percent of all grant funds must be used for direct payment of student scholarships. Each grantee is required to track students receiving scholarships and must maintain information on the cumulative support granted to RSA scholars, scholar-debt in years, program completion data for each scholar, dates each scholar's work begins and is completed to meet his or her payback agreement, current home address, and place of employment of individual scholars.

Each training grant recipient must provide this information to RSA annually using the RSA Grantee Reporting Form, (OMB# 1820–0617), an electronic reporting system. The RSA Grantee Reporting Form collects specific information regarding the number of RSA scholars entering the rehabilitation workforce, in what rehabilitation field, and in what type of employment (*e.g.* State agency, nonprofit service provider, or practice group). The information provided on the On-Line Grantee Reporting System will allow RSA to measure results against the goal of increasing the number of qualified vocational rehabilitation counselors working in State vocational rehabilitation agencies or related agencies.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Edward Smith, U.S. Department of Education, 400 Maryland Avenue, SW., room 5027, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7602.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 8, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

FR Doc. E5–592 Filed 2–11–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of open meeting and closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than February 25, 2005. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: March 3–5, 2005.

TIMES:

March 3

Committee Meetings: Assessment Development Committee: Closed Session—12 p.m. to 2:30 p.m.;

Ad Hoc Committee on NAEP 12th Grade Participation: Open Session—2:30 p.m. to 4:15 p.m.;

Executive Committee: Open Session—4:30 p.m. to 5:30 p.m.; Closed session 5:30 p.m. to 6 p.m.

March 4

Full Board: Open Session—8 a.m. to 12 p.m.; Closed Session 12 p.m.–1 p.m.; Open session 1 p.m.–4 p.m.

Committee Meetings: Assessment Development Committee: Open Session—10 a.m. to 12 p.m.;

Committee on Standards, Design, and Methodology: Open Session—10 a.m. to 12 p.m.;

Reporting and Dissemination Committee: Open Session—10 a.m. to 12 p.m.;

March 5

Full Board: Open Session—8 a.m. to 12 p.m.; Closed Session—12 p.m. to 1 p.m.; Open Session—1 p.m. to 4 p.m.

Location: Four Seasons Hotel, 98 San Jacinto Boulevard, Austin, Texas 78701.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer,

National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). THe Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

The Assessment Development Committee will meet in closed session on March 3 from 12 p.m. to 2:30 p.m. to review secure test items for the National Assessment of Educational Progress (NAEP) 2009 Reading Assessment. The meeting must be conducted in closed session as disclosure of proposed test items from the NAEP assessments would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 3, the Ad Hoc Committee on NAEP 12th Grade Participation and Motivation will meet in open session from 2:30 p.m. to 4:15 p.m. The Executive Committee will meet in open session on March 3 from 4:30 p.m. to 6 p.m.

The Executive Committee will meet in closed session on March 3 from 5:30 p.m. to 6 p.m. to receive independent government cost estimates for contracts related to the National Assessment of Educational Progress (NAEP). This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program and will provide an advantage to potential bidders attending the meeting. The discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 4, the full Board will meet in open session from 8:30 a.m. to 12 p.m. The Board will approve the agenda and the Chairman will introduce new Board members, who will then be administered the Oath of Office. The Board will then hear the Executive Director's report and receive an update on the work of the National Center for Education Statistics (NCES) from the Commissioner of NCES.

From 10 a.m. to 12 p.m. on March 4, the Board's standing committees—the Assessment Development Committee; the Committee on Standards, Design, and Methodology; and the Reporting and Dissemination Committee—will meet in open session.

On March 4, from 12 p.m. to 1 p.m., the full Board will meet in closed session. The Committee on Standards, Design, and Methodology will update the Board on the 12th grade Mathematics Achievement Level Setting Process and the Committee deliberations on January 11–12, 2005, in Jackson, Mississippi. The proposed achievement level cut scores and percent of students at each achievement level (Advanced, Proficient, Basic, and Below Basic) will be discussed with the Board for future approval. This information cannot be released to the public prior to the October release of the 2005 assessment in Mathematics. The No Child Left Behind Act of 2001 requires NAGB to release these data, in collaboration with NCES, after a thorough review of the data and report content for national and state release. These data constitute a major basis for the national release and cannot be released in an open meeting prior to the official release of the report. The meeting must be therefore be conducted in closed session as disclosure of data would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 4, the full Board will meet in open session from 1 p.m. to 4 p.m. Board members will receive and discuss preliminary recommendations from the Ad Hoc Committee on 12th Grade NAEP. This item will be followed by an update on the NAEP 2009 Science Framework contract from 2:30 p.m. to 3 p.m. The Board will then hear a presentation from ACT Inc., on recent research on readiness for college and training for work from 3 p.m. to 4 p.m. after which the March 4 session of the board meeting will adjourn.

On March 5, the Board's Nominations Committee will meet in open session from 8 a.m. to 9 a.m. The full Board will convene in open session on March 5 from 9 a.m. to 12 p.m.

From 9 a.m. to 10:30 a.m., the Board will hear a presentation on the High school initiative. Board actions on policies and Committee reports are scheduled to take place between 10:45 a.m. and 12 p.m., upon which the March 5, 2005 session of the Board meeting will adjourn.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. eastern standard time.

Dated: February 9, 2005.

Sharif M. Shakrani,

Deputy Executive Director, National Assessment Governing Board.

[FR Doc. 05–2784 Filed 2–11–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[FE Docket Nos. 04–131–NG, 04–95–LNG, 88–33–NG, 95–56–NG, 05–01–NG]

Office of Fossil Energy; Abitibi-Consolidated, Duke Energy LNG Marketing and Marketing and Management Company, Open Flow Gas Supply Corporation, Brymore Energy Inc., Selkirk Cogen Partners, L.P.; Orders Granting and Vacating Authority To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during January 2005, it issued Orders granting authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 8, 2005.

R.F. Corbin,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE Docket No.	Import volume	Export volume	Comments
2064	1–5–05	Abitibi-Consolidated 04–131–NG	5 Bcf		Import and export natural gas from and to Canada, beginning on February 1, 2005, and extending through January 31, 2007.
2025–A	1–6–05	Duke Energy LNG Marketing and Management Company. 04–95–LNG	.....	.....	Vacate blanket import authority.
266–A	1–14–05	Open Flow Gas Supply Corporation 88–33–NG	.....	.....	Vacate blanket import authority.
1076–A	1–27–05	Brymore Energy Inc 95–56–NG	.....	.....	Vacate blanket import and export authority.
2065	1–27–05	Selkirk Cogen Partners, L.P 05–01–NG	75 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 29, 2005, and extending through January 28, 2007.

[FR Doc. 05–2778 Filed 2–11–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Klondike III Wind Project Interconnection

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice announces BPA's intention to prepare an EIS, under the National Environmental Policy Act (NEPA), on a proposed interconnection requested by PPM Energy, Inc. (PPM) to integrate electrical power from their proposed Klondike III Wind Project (Wind Project) into the Federal Columbia River Transmission System (FCRTS). The Wind Project is located in Sherman County, Oregon. BPA proposes to execute an agreement with PPM to provide them with an interconnection for up to 300 megawatts (MW) of generation from the Wind Project. Interconnection would require BPA to build and operate a new 230-kilovolt (kV) transmission line and two substations.

DATES: Written comments on the NEPA scoping process are due to the address below no later than March 17, 2005. Comments may also be made at an EIS scoping open house meeting to be held on March 1, 2005, at the address below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS and requests to be placed on the Wind Project mailing list to Bonneville Power Administration, Communications—DM–7, P.O. Box 14428, Portland, OR 97293–4428. Comments may also be sent to the following Web site: *http://www.transmission.bpa.gov/NewsEv/commentperiods.cfm.*

Please refer to the Klondike III Wind Project Interconnection in all communications. A scoping meeting will be held on March 1, 2005, from 6 p.m. to 8 p.m., at St. Mary's Parish Hall, 807 Barnett Street, Wasco, Oregon. At this open house meeting, BPA representatives will be available to discuss the proposed project, answer questions, and accept oral and written comments. BPA representatives will provide information on alternative routes being considered for the proposed BPA transmission line, the types of transmission line structures being considered, and topics to be addressed in the EIS. PPM representatives will be available to discuss the proposed Wind Project.

FOR FURTHER INFORMATION CONTACT: Kimberly St. Hilaire, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621, toll-free telephone 1–800–282–3713; direct phone number 503–230–5361, fax number 503–230–5699, e-mail *krsthilaire@bpa.gov.* Additional information can be found at BPA's Web site: *http://www.transmission.bpa.gov/PlanProj/Wind/.*

SUPPLEMENTARY INFORMATION:

Proposed Action. BPA proposes to execute an agreement with PPM to provide interconnection services for up to 300 MW of the Klondike III Wind Project. As part of this agreement, BPA would agree to construct and operate a 230-kV transmission line about 12 miles long, and two new substations, one at each end of the proposed transmission line. The electricity from the Wind Project would interconnect to the FCRTS at BPA's existing John Day Substation through a new 500/230-kV substation which could accommodate wind developers in the area. Transmission line structure types being considered include H-frame wood pole, steel pole, and lattice steel. The line and new substations would be located on privately owned land primarily used for dryland wheat farming.

In addition to these Federal actions, the EIS will consider the reasonably foreseeable consequence of construction and operation of PPM's proposed Klondike III Wind Project. The Wind Project would be located adjacent to the currently operating Klondike Wind Project, Phases I and II, on privately owned land, most of which is used for agriculture. The Klondike III Wind Project would add up to 165 operational wind turbines by the end of 2006. The Wind Project includes wind turbines, substations, access roads, and other project facilities. Siting of the proposed Wind Project is under the jurisdiction of Oregon Energy Facility Siting Council (EFSC). PPM is in the process of applying for an EFSC Site Certificate for the Wind Project, and is also determining which other State and Federal permitting requirements will need to be met for the Wind Project.

Construction of the BPA transmission line and substations and the Wind Project currently is expected to commence by March 2006. The Wind Project would be interconnected to BPA transmission lines in the fall of 2006, with a proposed operation date of December 2006. Agricultural activities could continue to take place directly adjacent to the transmission line structures and wind turbines. The Wind Project would operate for much of each year for at least 20 years.

Possible Alternatives for BPA's Proposed Action. An alternative to the

proposed action of offering interconnection contract terms is to not offer these terms. The EIS will evaluate this ''no-action'' alternative. In addition, the EIS will evaluate alternatives for routing the proposed BPA transmission line. At this time, two potentially feasible alternatives have been identified:

- The Cross-County Alternative; and
- The Medler Road Alternative (see attached Project Area Map).

Another alternative, the South of Wasco Alternative (see Project Map), was initially considered but has been eliminated from further consideration in the EIS due to the potential for greater visual, airport safety, and wetland impacts, as well as greater cost relative to other alternatives.

Public Participation and Identification of Environmental Issues. BPA is the lead Federal agency under NEPA for the EIS. BPA has established a minimum 30-day scoping period during which affected landowners, Tribes, concerned citizens, special interest groups, local governments, State and Federal agencies, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA identify potentially significant impacts that may result from BPA's proposed action and the private Wind Project, and ensure that all relevant environmental issues related to BPA's proposed action are addressed in the EIS. Based on BPA's experience, potential environmental issues for the Wind Project and BPA's interconnection facilities may include noise created by wind turbines, visual effects from the wind turbines and transmission line, socioeconomic impacts created by an influx of construction workers into a sparsely populated area, effects on recreation (primarily hunting), impacts on cultural resources, and impacts to wildlife habitat and populations, including migratory birds.

When completed, the Draft EIS will be circulated for review and comment, and BPA will hold a public comment meeting on the Draft EIS. In the Final EIS, BPA will consider and respond to comments received on the Draft EIS. BPA expects to publish the Final EIS in late 2005 or early 2006. BPA's subsequent decision will be documented in a Record of Decision.

In addition to BPA's EIS process, Oregon EFSC provides opportunity for public participation as part of its site evaluation process. It is expected that representatives from the Oregon Office of Energy will hold public meetings for the Wind Project during 2005. BPA will coordinate with Oregon EFSC to ensure full consideration of all public and agency comments received.

Issued in Portland, Oregon, on February 4, 2005.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 05–2781 Filed 2–11–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Policy for Power Supply Role for Fiscal Years 2007–2011 (Regional Dialogue)

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of a National Environmental Policy Act (NEPA) Record of Decision (ROD).

SUMMARY: This notice announces the availability of the NEPA ROD to adopt a policy on BPA's power supply role for fiscal years 2007–2011. This policy is intended to provide BPA's customers with greater clarity about their Federal power supply so they can effectively plan for the future and make capital investments in long-term electricity infrastructure if they choose. It is also intended to provide guidance on certain rate matters BPA expects to be addressed in the next rate period, while assisting the agency in fulfilling its long-term strategic goals and responsibilities to the region. Each policy issue has been evaluated for environmental effects and, for those involving NEPA, those effects have been addressed in the Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995). Thus, this NEPA ROD is consistent with and tiered to the Business Plan EIS and the Business Plan ROD (August 15, 1995). This policy, which is also referred to as the Regional Dialogue as it is the result of a regional discussion process beginning in April 2002, is described more fully in a separately issued Administrator's ROD that addresses the legal and policy rationale supporting the administrative decisions.

ADDRESSES: Copies of the following documents may be obtained by calling BPA's toll-free document request line, 1–800–622–4520, or by visiting the Web site at *http://www.efw.bpa.gov:* The NEPA ROD for the Policy for Power Supply Role for Fiscal Years 2007–2011; the Administrator's ROD on the policy; and the Business Plan EIS and ROD.

FOR FURTHER INFORMATION, CONTACT: Katherine S. Pierce, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *kspierce@bpa.gov.*

SUPPLEMENTARY INFORMATION: The Business Plan EIS to which this NEPA ROD is tiered was prepared to support a number of decisions including the products and services BPA will market, rates for BPA's products and services, policy direction for BPA's sale of power products to customers, contract terms BPA will offer for power sales, and plans for BPA's resource acquisitions and power purchase contracts. Each of the issues in this Regional Dialogue policy that were found to have any environmental effects were consistent with the Market Driven Alternative adopted in the Business Plan ROD. For some policy issues, NEPA was not implicated because there were no environmental effects, and for other issues, NEPA was not triggered because they are a continuation of the status quo. For the remaining issues, any environmental effects have already been addressed in the Business Plan EIS.

Issued in Portland, Oregon, on February 4, 2005.

Stephen J. Wright,

Administrator and Chief Executive Officer.

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DEPARTMENT OF ENERGY

Bonneville Power Administration

Bonneville Power Administration's Policy for Power Supply Role for Fiscal Years 2007–2011

AGENCY: Bonneville Power Administration (BPA), Department of Energy.

ACTION: Notice of final policy.

SUMMARY: This notice announces BPA's final policy regarding how the agency intends to market power and distribute the costs and benefits of the Federal Columbia River Power System (FCRPS) in the Pacific Northwest for fiscal years (FY) 2007–2011. This policy clarifies BPA's obligation to supply power to its regional power customers and guides BPA in developing and establishing its firm power rates in the future.

ADDRESSES: This policy and the Administrator's record of decision (ROD) are available on BPA's Web site at *http://www.bpa.gov/power/regionaldialogue.* Copies are also available by contacting BPA's Public Information Center at (800) 622–4520.

FOR FURTHER INFORMATION CONTACT: Helen Goodwin, Regional Dialogue project manager, at (503) 230–3129.

SUPPLEMENTARY INFORMATION:

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I. Scope of Regional Dialogue

The Regional Dialogue process began in April 2002 when a group of BPA's Pacific Northwest electric utility customers submitted a ''joint customer proposal'' to BPA that addressed both near- and long-term contract and rate issues. The proposal focused on how BPA would market Federal power and distribute the costs and benefits of the FCRPS under 20-year power sales contracts as a means to settle litigation on the Residential Exchange Program Settlement Agreement signed in 2000. It was believed that both near- and long-term issues could be resolved before BPA's next rate period in October 2006. Since then, BPA, the Northwest Power and Conservation Council (Council), customers, and other interested parties have continued to work on both near- and long-term issues. Considering the depth and complexity of these issues, BPA concluded it was not practical to resolve all issues before the start of the next rate period.

BPA's current firm power rates expire at the end of FY 2006. Nearly all of BPA's regional power sales contracts continue through FY 2011. BPA believes its first priority is to resolve policy issues that likely will influence the last 5 years of those contracts, the next rate case, and decisions to be made by customers concerning BPA power service during that period.

By February 2004, BPA decided to address the issues in two phases. The first phase of the Regional Dialogue addresses issues that must be resolved in order to replace power rates that will expire in September 2006. These decisions will create certainty for the FY 2007–2011 period and set the stage for the long-term phase of the Regional Dialogue that follows. The second phase will address issues that are critical to determine how BPA in the longer term will market Federal power and distribute the costs and benefits of the FCRPS for 20 years, with the objective of implementing new 20-year contracts well before current power contracts expire in FY 2011. The process and schedule for resolving these issues is included in section IV.B.

The Council has played an active role in helping to plan and guide BPA's development of the near-term Regional Dialogue policy direction, as well as in setting the stage for developing the long-term policy direction. BPA and the Council agree on the overall goals of the Regional Dialogue process to determine BPA's long-term role in providing power to regional customers at the lowest cost-based rates and capturing that role in long-term contracts and rates as soon as possible to create a durable solution. Underlying the Regional Dialogue's focus on addressing BPA's long-term power supply role is the need to assess and understand the impact the 2000–2001 West Coast electricity crisis has had on BPA and its customers.

II. Link to FY 2007–2011 Strategic Direction

The financial impacts of the West Coast electricity crisis of 2000–2001 led many utilities to examine their policies and approaches to their power supply. BPA is no exception. Over the past year, BPA has invested significant time and effort in strategic planning directly related to its power supply.

This re-examination of BPA's mission and core values has, along with comments and advice from the Council, customers, constituents, tribes, and other regional stakeholders, helped inform the agency's approach to the Regional Dialogue.

A. Report to the Region

In early 2003, BPA initiated a detailed examination of the events that began in 2000 that led to the significant rate increases and deterioration of BPA's financial condition. On April 18, 2003, BPA released a Report to the Region that included lessons the agency learned, with the intention of translating those lessons into future actions.

Among a number of other lessons, the report noted that the level of BPA's costs and risks are driven heavily by the load obligations BPA assumes under contracts with customers. Meeting those load obligations was a large driver of BPA's cost and rate levels. The report pointed out that the amount of risk (market volatility and uncertainty) to be managed in the whole region's power system has grown substantially and the fraction of that risk that BPA can absorb has gotten smaller. The report also noted that BPA must avoid the need to acquire large amounts of power on short notice to meet customer load demand.

This policy has been developed specifically with those lessons in mind, particularly to resolve the agency's customer load service uncertainty as soon as possible and provide customers with the power supply clarity they need.

B. Strategic Direction

The Report to the Region highlighted the need for BPA to have a clear and steady strategy and manage to clear objectives. In response, the agency devoted a significant amount of time to clarifying its strategic direction.

BPA's strategic direction establishes the agency's most important objectives and the actions that will help it manage to these objectives. The strategic direction calls on BPA to advance the Pacific Northwest's future leadership in four core values—high reliability, low rates consistent with sound business principles, responsible environmental stewardship, and clear accountability to the region.

It should come as no surprise that the subjects covered in the Regional Dialogue are well represented in the agency's strategic direction, particularly with regard to BPA's role as a low-cost provider and the need for clear regional accountability. The strategic direction guiding this policy includes:

1. Regional Infrastructure Development: BPA policies encourage regional actions that ensure adequate, efficient, and reliable transmission and power service.

2. Conservation and Renewables: Development of all cost-effective energy efficiency in the loads BPA serves, facilitation of regional renewable resources, and adoption of cost-effective nonconstruction alternatives to transmission expansion.

3. Benefits to Residential and Small-Farm Consumers of Investor-Owned Utilities (IOUs): The post-2011 benefit that BPA provides to IOUs for their residential and small-farm consumers is equitable based on the Northwest Power Act.

4. Rates: BPA's lowest firm power rates to public preference customers reflect the cost of the undiluted Federal Base System (FBS), are below market for comparable products, and are kept low through achievement of BPA's objectives at the lowest practical cost.

5. Service to Direct-Service Industrial Customers (DSIs): Explore a post-2006 DSI service option with a known and capped value.

6. Regional Stakeholder Satisfaction: Customer, constituent, and tribal satisfaction, trust, and confidence meet targeted levels.

7. Management: Collaborative customer/constituent/tribal relationships are supported by managing to clear long-term objectives with reliable results.

8. Cost Recovery: Consistent cost recovery over time.

9. Ratepayer and Taxpayer Interests: FCRPS assets are managed to protect ratepayer and taxpayer interests for the long term.

10. Best Practices: Best practices (with emphasis on cost performance and simplicity) are obtained in key systems and processes.

11. Risk: Risks are managed within acceptable bounds.

Additional principles guiding the Regional Dialogue are:

12. Legal Criteria: Approaches or policy options should not require legislative change and should minimize legal risk.

13. Treasury Payment: BPA will plan to achieve and maintain a Treasury payment probability (TPP) that is the equivalent of a 95 percent probability for a 2-year period and an 88 percent probability for a 5-year period. Options for achieving this goal include, but are not limited to, cost recovery adjustment clauses (CRACs) and planned net revenue for risk.

III. An Integrated Strategy for FY 2007–2011

BPA's policy decisions on each of the issues raised in its July proposal are given below. The reasoning behind each decision, including how BPA addressed public comment in making the decision, is contained in the record of decision (ROD). Where decisions are required to be made in a rate case, the policies articulated here will guide BPA's initial rate case proposal.

A. FY 2007–2011 Rights to Lowest-Cost Priority Firm (PF) Rate

BPA will apply the lowest-cost PF rates to its public agency customers whose contracts contain the lowest-cost PF rate guarantee throughout the remaining term of the Subscription power sales contracts.

B. Tiered Rates

BPA will exclude a tiered PF rate proposal applicable to firm power load requirements sales to public agency customers from its FY 2007 initial rate case proposal. Tiered rates will be considered as part of an integrated long-term contract and rate solution that will implement the long-term Regional Dialogue policy of limiting BPA sales of firm power to its Pacific Northwest customers' firm requirements loads at its lowest-cost rates to approximately the firm capability of the existing Federal system.

C. Term of the Next Rate Period

BPA will limit the duration of the next rate period to three years, from FY 2007 through FY 2009. This will allow BPA to set rates lower than would be needed for a five-year rate period, all else being equal. In addition, a shorter rate period reduces the need for rate adjustment mechanisms such as the current CRACs. BPA plans to conduct a separate rate case to ensure new rates are in place when new contracts take affect. Depending on decisions yet-to-be made, this could result in BPA offering two sets of rates through FY 2011 (one for Subscription contract holders and one for Regional Dialogue contract holders). An additional rate period of 2 years will run from FY 2010 through FY 2011.

D. Service to Public Agency Customers With Expiring Five-Year Purchase Commitments That Do Not Contain Lowest PF Rate Guarantee through FY 2011

BPA will offer all of its public agency customers whose contracts expire on September 30, 2006, and do not contain a guarantee of the lowest cost-based PF rates beyond FY 2006 either an amendment to extend the term of their existing contracts through September 30, 2011, or a new contract reflecting a product listed in Section III.F., below, that will expire on September 30, 2011. The customers' net requirements will be calculated consistent with their existing contract or prior to execution of a new contract consistent with section 5(b)(1) of the Northwest Power Act and BPA's Section 5(b)/9(c) Policy. As part of a contract amendment or new contract offer, BPA also will offer language that guarantees the lowest cost-based PF rates (except for New Large Single Loads (NLSL)) through FY 2011.

BPA will offer all of its public agency customers whose contracts expire on September 30, 2011, and contain either a 5-year PF off-ramp or on-ramp option that expires on September 30, 2006, an amendment to cancel their respective PF off-ramp options early or exercise on-ramp options early. The offer also will include language that guarantees the lowest cost-based PF rates (except NLSL) through FY 2011. The customers' net requirements will be calculated consistent with their existing contracts.

Public agency customers with either the expiring 5-year contracts or the expiring 5-year ramp options will have a 60-to-90-day period, specified by BPA, in which to accept BPA's offer. The offer will expire no later than June 30, 2005.

Public agency customers that do not accept BPA's offer during the prescribed time frame will not be eligible to receive the lowest cost-based PF rates guarantee and will be subject to a Targeted Adjustment Charge (TAC) or its successor, as appropriate, beginning in FY 2007.

BPA had proposed to recalculate the net requirements of customers with expiring 5-year contracts or ramp options and limit sales at the lowest-cost rate to their recalculated net requirements. All but one of such customers have full or partial requirements contracts which automatically limit their lowest-cost service to their actual net requirements. The remaining customer has a contract which, upon review, does not allow BPA to recalculate its net requirements and limit its lowest-cost rate deliveries to the recalculated amount. BPA's strong view is that limiting customers to the amount of lowest-cost power they actually need to meet their net requirements is most consistent with BPA's broader decision to limit its total sales at its lowest-cost rates. However, BPA has decided not to limit this customer to its recalculated net requirements because this is not consistent with the existing contract with that customer.

E. Service to New Public Agency Utilities and Annexed Investor-Owned Utility (IOU) Loads

New Public Agency Utilities: To be eligible to purchase firm power at the lowest-cost PF rates during the FY 2007–2009 period, an entity that forms a new public agency utility must request service under section 5(b)(1) of the Northwest Power Act, meet BPA's Standards for Service, and execute a power sales contract with BPA prior to

June 30, 2005, to take power deliveries on or before October 1, 2006. An exception to meeting the June 30, 2005, date is made for new small public agency utilities with an individual load of 10 average megawatts (aMW) or less, and all of these customers are not to exceed 30 aMW of load service in total. Such new small public utilities have until January 1, 2006, to request service under section 5(b)(1) of the Northwest Power Act, meet BPA's Standards for Service, and execute a power sales contract with BPA to begin taking power service on or before October 1, 2006.

New public agency utilities that meet BPA's Standards for Service and request firm power service from BPA after June 30, 2005, or January 1, 2006, in the case of small new public utilities, will be served at the lowest-cost PF rate plus a charge or rate that covers any incremental costs incurred by BPA to serve the new public agency's load. The charge will be similar to the current TAC or successor rate and will be applicable for the rate period that begins in FY 2007.

Annexed IOU Loads: Consistent with existing contract terms and conditions, in the FY 2007–2009 period, if a public agency customer requests firm power service for load that is annexed from an IOU's service area, and that contains residential or small-farm load that was receiving residential exchange benefits from the IOU under Subscription Settlement Agreements, the public agency customer will receive a prorated share of such benefits. These benefits are provided in the form of an aMW amount of load that is exempt from any incremental-cost charge or rate applicable to the public agency customer's load service. Such treatment will apply regardless of whether the annexing public agency customer is a new or existing customer.

BPA will propose in its initial rate case proposal that power service for annexed IOU load that a public agency customer requests after June 30, 2005, will be subject to a TAC or its successor, as appropriate, beginning in FY 2007.

The above policy on annexed load of IOUs does not apply to public agency customers' mergers or to one public agency annexing another public agency's load. BPA will propose in its initial rate case proposal that it will continue to serve load annexed (excluding NLSL) from a public utility customer by another public utility customer at the lowest-cost PF rate for the FY 2007–2011 period if such load was previously receiving such service.

F. Product Availability

Products for Customers Whose Contracts Expire in FY 2006 or Are New Public Agency Customers: Any new public agency customer or customer whose contract expires in FY 2006 that executes a new contract for service through September 30, 2011, may select from any of the following core requirement products: Full Requirements Service, Simple Partial Requirements Service, Partial Requirements Service with Dedicated Resources, or Block Service (with the optional feature of Shaping Capacity). The terms of the contract will be consistent with the terms described in sections III.D. and III.E. above. BPA is not offering Complex Partial (Factoring), Block with Factoring, or the Slice product to these customers.

Product Switching or Changing the Allocation of Products Currently Purchased by Customers with Contracts that Expire in FY 2011: BPA will not offer contract amendments that would allow changes in the power products and services purchased by 10-year Subscription contract holders, including, but not limited to, changes that would increase the total Slice megawatts currently sold by BPA.

Acquisition of Non-Federal Resources to Reduce Net Requirements by Public Agency Customers with Contracts that Expire in Either FY 2006 or FY 2011: BPA will consider, on a case-by-case basis, requests from a customer that purchases a load-following product to add non-Federal resources to their existing Subscription contract declarations but only if those additions reduce BPA's FY 2007–2011 load-serving obligation without increasing costs or risks for other customers. BPA will make such a determination at the time a customer makes its request. In doing so, BPA will also consider reclassifying the customer's load-following contract (*e.g.,* full service to simple partial), if necessary.

G. Service to Direct-Service Industries (DSIs)

BPA has determined that it will provide eligible Pacific Northwest DSIs some level of Federal power service benefits, at a known quantity and capped cost, in the FY 2007–2011 period. While no final decision regarding the actual level of service benefits to be provided is being made at this time, it is anticipated that service will be at a substantially reduced level compared to the level contracted for in the current FY 2002–2006 rate period. BPA wishes to further discuss the level of the DSI service benefit, and criteria for eligibility, with PNW regional interests before making final policies or decisions on those issues. In addition, BPA is not making a final decision at this time regarding the mechanism or mechanisms BPA will use to provide these service benefits.

BPA will establish a regional process to take further comment from interested parties regarding the level of service benefits to be provided and the eligibility criteria that should be used to determine whether a DSI will qualify for these service benefits. This regional process will provide opportunities for written comments and will include one or more noticed meetings. As part of this process, BPA will issue a letter shortly establishing this regional process and describing a BPA proposal with respect to the level of benefits and eligibility criteria.

Following the conclusion of the DSI comment period, BPA intends to issue a supplement to the Regional Dialogue ROD for this policy in which BPA will issue policies and decisions regarding the level of DSI service benefits to be offered and eligibility criteria.

Subsequently, BPA will work during the summer of 2005 to develop the contractual mechanism or mechanisms that should be used to provide the DSI service benefits. These mechanisms, and BPA's proposal on the DSIs that it believes meet the eligibility criteria and should be offered service, will be shared with the region for review and comment. BPA will attempt to make final decisions regarding the contract mechanisms and qualifying DSIs in the fall of 2005, subject to any decision that must be made in a rate case.

H. Service to New Large Single Loads (NLSL)

Transfer of DSI Load to Local Utility Service in 9.9 aMW Increments: Any DSI production facility load (Contract Demand) formerly served at the IP rate that transfers to local utility service will be an NLSL and will be subject to the New Resources (NR) rate if served with Federal power as firm requirements load under the utility's Northwest Power Act section 5(b)(1) contract unless the load:

(1) Qualifies for the renewables and on-site cogeneration option described below; or

(2) Was a new production load that (i) was separable from the DSIs 1981 contract demand; (ii) new plant added after November 16, 1992; and (iii) could have qualified for BPA PF service from a local public utility at the time under BPA's November 16, 1992, New Large Single Load Treatment of Utility Service to Direct Service Industry Expansions (Atochem) Record of Decision. BPA is

aware of a single plant at the Port Townsend Paper Company, an approximately 3 aMW Old Corrugated Cardboard recycle facility, that was eligible for utility service in 1996 when it was completed but was not served by the local utility under BPA's Atochem policy.

This policy does not preclude BPA from selling surplus firm power consistent with section 5(f) of the Northwest Power Act to utility customers at a section 7(f) rate to serve former DSI load.

Renewables and On-site Cogeneration Option Under the NLSL Policy: In order to further promote the development and use of renewable resources and on-site cogeneration in the region, BPA will provide an option to a consumer with a single large load whose load would otherwise be an NLSL eligible for service with Federal power purchased at BPA's NR rate but for the application of renewable and on-site cogeneration resources to reduce the load to less than 10 aMW. This option will be available to consumers with single large loads at facilities that are otherwise NLSLs, including existing NLSLs, former DSI loads, new consumer loads, increases in existing loads that exceed 10 aMW in a 12-month period, and consumer loads changing service from one utility supplier to another utility.

For existing NLSLs served with dedicated NLSL resources, this option does not give BPA's consent for removal of any resource dedicated to the NLSL. BPA's section 5(b)/9(c) Policy of May 2000 requires resources that are dedicated to serving regional load, including NLSLs, to continue to remain dedicated to such service. Consistent with the 5(b)/9(c) policy, this policy does not require BPA to give consent to remove a resource or agree to amend its power sales contracts for a resource dedicated to serving an NLSL.

If a consumer directly provides on-site cogeneration or acquires a regional renewable resource with an associated transmission path to its load to serve all or a portion of a load associated with a facility that is otherwise an NLSL and if the consumer's remaining new load or load increase placed on the local utility is reduced to 9.9 aMW or less, then that 9.9 aMW load served by the utility is served at the PF rate. A consumer's purchase of a renewable resource for purposes of this renewable resource and on-site cogeneration option must be in compliance with applicable state law.

The on-site cogeneration or renewable resource must be continuously applied to the consumer's load. If the end-use consumer or the serving utility on behalf of the end-use consumer at any time sells, discontinues, displaces, or removes a cogeneration resource or the renewable resource or portion thereof from service to the end-use consumer's load at the facility, then all the load or the increase in load at the facility is an NLSL served at the NR rate or another 7(f) rate designed to recover BPA's cost for covering such load, whichever is greater.

If the facility's load ever exceeds the sum of the renewable resource, any added renewable resource(s), any on-site cogeneration resource amount, and the 9.9 aMW, then such amount of load served by BPA is an NLSL and is eligible for service at the NR rate.

I. Service to Residential and Small-Farm Consumers of Investor-Owned Utilities (IOUs)

BPA's Subscription contracts with the region's six IOUs require the agency to provide 2,200 aMW of power or financial benefits to the residential and small-farm consumers of these customers during FY 2007–2011. BPA recently signed agreements with all six regional IOUs that provide certainty in the amount and manner that benefits will be provided to their residential and small-farm consumers under their Subscription contracts. These agreements provide certainty by defining benefits as financial payments, not power deliveries, defining a mark-to-market methodology that uses an independent market price forecast in calculating the financial benefits and establishing a floor of $100 million and a cap of $300 million per year for these financial benefits.

BPA expects this approach will successfully implement the Subscription contracts. However, these agreements are under legal challenge. Since a fundamental goal of this Regional Dialogue policy is clarification of BPA and customer load obligations for the FY 2007–2011 period, BPA is clarifying how it will proceed if the new agreements are set aside.

In the event a court sets aside the new agreements and amendments but leaves the underlying Subscription contracts in place, BPA is providing the IOUs a contingent notice that BPA will provide financial benefits, not power benefits, during FY 2007–2011 under those contracts. In such an event, the financial benefits will continue to be based, in part, on a forecast of the market price of power developed in a BPA power rate case. If the Subscription contracts are successfully challenged in court, the agency will act consistent with the court's ruling in negotiating new contracts to provide power or financial benefits to the residential and small-farm consumers of IOUs under the Northwest Power Act.

J. Conservation Resources

While there has been much discussion of how conservation development might be regionally structured for the post-2006 time frame, BPA has not yet determined what the specific terms and conditions will be.

BPA has adopted five principles to guide the full development of BPA's conservation acquisition programs in the post-2006 period. These general principles are:

- BPA will use the Council's plan to identify the regional cost-effective conservation targets upon which the agency's share (approximately 40 percent) of cost-effective conservation is based.
- The bulk of the conservation to be achieved is best pursued and achieved at the local level. There are some initiatives that are best served by regional approaches (for example, market transformation through the Northwest Energy Efficiency Alliance). However, the knowledge local utilities have of their consumers and their needs reinforce many of the successful energy efficiency programs being delivered today.
- BPA will seek to meet its conservation goals at the lowest possible cost to BPA. While it is a given that only cost-effective measures and programs should be pursued, the region can also benefit by working together to jointly drive down the cost of acquiring those resources.
- BPA will continue to provide an appropriate level of funding for local administrative support to plan and implement conservation programs.
- BPA will continue to provide an appropriate level of funding for education, outreach, and low-income weatherization such that these important initiatives complement a complete and effective conservation portfolio.

These principles are consistent with the Council's recommendations. However, there is a need for significant detail to be developed before these principles can be transformed into a specific program structure that best serves the region. There is currently an ongoing collaborative planning process to develop a fully defined proposal for conservation. BPA will, accordingly, make public its final policy with respect to conservation at a later date, following the conclusion of the collaborative process.

Finally, as BPA pursues opportunities to reduce long-term costs to ratepayers, conservation and other demand-side

management options will be carefully considered as part of the solution to transmission constraints. Conservation can be part of a non-wires solution that not only will provide low-cost power resources but also will reduce or defer the need for transmission construction.

K. Renewable Resources

BPA will shift from a program focused on direct acquisition to an active and creative facilitation role with respect to renewable resource development. Although BPA will still consider acquisition as a viable facilitation option under the appropriate circumstances, the agency's primary focus will be to reduce the barriers and costs interested customers face in developing and acquiring renewables. As an added benefit, BPA believes its facilitation role will also help non-BPA customers develop renewable resources in the region.

BPA will use a combination of tools and will engage with its customers and other stakeholders to determine which facilitation options will most effectively leverage the agency's available funds to maximize regional development of renewable resources. The facilitation tools BPA sees as being available include, but are not limited to:

Integration Services: BPA recently began offering two wind integration services in the spirit of regional facilitation. These services, and other sound and prudent uses of the flexibility of the Federal hydro system, have the potential to serve as a key component of the agency's renewables facilitation effort.

Transmission System Improvements: Another facilitation option is participation in regional efforts to construct strategic transmission lines to foster the development of the region's excellent wind resources. BPA is also exploring ways to make more efficient use of existing transmission infrastructure.

Rate Discount: Approximately 30 customers have devoted a portion of their Conservation and Renewables Discount (C&RD) funds to renewables in this rate period. Continuing such a rate discount mechanism is another facilitation option.

Direct Acquisition: If BPA determines there is a need to acquire power to meet its regional firm power load obligations, BPA may consider innovative opportunities to purchase from renewable resources, including the participation in such resources by interested BPA customers. The agency will consider other acquisition activities as well if they are the most cost-effective among competing facilitation options and can be accomplished consistent with the agency's financial objectives and governing statutes.

Other Options: BPA is actively consulting with customers and other stakeholders to identify other options that will help facilitate regional renewables development. All of BPA's renewable resources facilitation activities will be subject to a risk review to ensure that they are consistent with the agency's financial and risk management objectives.

Program Funding: BPA will spend up to a net of $21 million per year to support its facilitation activities. The $21 million net expense is a measurement of the expected, added costs of our renewable program measured against avoided alternative long-run marginal power costs. The $21 million comprises the existing $15 million renewables fund and $6 million of annual renewables spending that is currently being accomplished through the C&RD program, which expires at the end of the current rate period. BPA will continue consulting with customers and other constituents as to whether a Renewables Rate Discount Program should be established in the next rate period, or alternatively, whether BPA should use the funds for other facilitation mechanisms. The costs of the renewables program will be recovered in BPA's firm power rates.

L. Controlling Costs and Consulting With BPA's Stakeholders

For the term of existing contracts (through FY 2011), or until new contracts go into effect if that is earlier, BPA will continue to focus on non-contractual means that promote transparency under BPA's financial information disclosure policy, allow for public input on agency costs, and demonstrate management of those costs. BPA recognizes the wide range in concerns and, hence, solutions to the issue of long-term cost control. BPA will continue discussions on long-term cost control in preparation for the July 2005 Regional Dialogue policy proposal on long-term issues. BPA's short-term enhancement activities will include the following:

Collaborative Forums: BPA will engage customers and non-customers in collaborative forums structured similarly to the Power Net Revenue Improvement Sounding Board and current Customer Collaborative to improve the effectiveness and efficiency of BPA's communication processes.

Financial Reporting with Customer and Constituent Input: BPA will continue to improve its external financial reporting in order to increase the clarity and usefulness of BPA's reports to both experts and laypersons. Such information will also continue to be posted on BPA's Web site before it is released to any single customer or constituent group.

Business Process Improvement: In July 2004, a consulting firm hired by BPA conducted a high-level overview of the agency's business processes and recommended functions that warrant more in-depth analysis for strategically and effectively promoting process improvements. The consultant made 23 recommendations in all. In FY 2005, BPA will conduct 7 in-depth process reviews selected from the original 23 recommendations to identify opportunities for improvements in efficiencies and effectiveness. How and when the remaining recommendations will be pursued will be determined by the results of the first phase. This is a multi-phased, multi-year effort that will require a sustained commitment. BPA will provide periodic status reports as significant milestones are achieved.

Power Function Review: In 2005, BPA will conduct an in-depth regional discussion regarding power function cost levels that will be used to set power rates for the FY 2007–2009 rate period. This process will be designed to provide full disclosure of BPA's planned cost levels and ample opportunity for customer, constituent, and tribal input on those proposed levels prior to initiation of the power rate case.

IV. Long-Term Issues

A. Long-Term Policy: Limiting BPA's Long-Term Load Service Obligation at Lowest Cost Rates for Pacific Northwest Firm Requirements Loads

BPA is establishing a long-term policy regarding its PNW customer load obligations. BPA's policy is to limit its sales of firm power to its PNW preference customers' firm requirements loads at its lowest-cost rates in an amount approximately equal to the firm capability of the existing Federal system. BPA expects that firm power load service in excess of the Federal system capability will be provided at a higher, tiered rate, that reflects the incremental cost of power purchased or acquired to meet those additional loads. BPA intends this long-term policy to be implemented through new long-term contracts and rates on the schedule presented in the next section. As stated in Section III.B., Tiered Rates, BPA does not propose to adopt or implement PF tiered rates applicable to public agency customers in its FY 2007 initial rate case proposal.

By itself, this long-term policy is not enough. It is only one step. Creating certainty will require subsequent development of new power contracts and rates. The schedule for these additional steps is described next.

B. Schedule for Long-Term Issue Resolution

BPA and the region have a strategic interest in resolving a number of key long-term issues. BPA is strongly inclined toward 20-year contracts, assuming parties can reach agreement on reasonable terms. This interest centers on providing BPA customers certainty over load service obligations and enabling customers and the market to respond with the necessary electric industry infrastructure investments. Other key strategic interests include general market stability, BPA risk management, and long-term assurance of funding to repay the United States Treasury. BPA's interest in resolving these long-term issues is shared by most BPA customers and by the Council.

To become effective, almost all the decisions must be captured in new long-term contracts and rates. There is a range of opinions within the region on the commitments and decisions can be made in contracts versus those that can be made in rates. BPA's view is that customers, BPA, and other stakeholders must work together to develop a logically linked set of new contracts and rates and that neither by itself will be sufficient to accomplish the long-term goals. This split between contracts and rates must be discussed and decided.

BPA intends seriously to explore the proposal and establishment of a long-term tiered rates methodology to accompany new 20-year contracts during the next phase of the Regional Dialogue. BPA also believes there is a need to develop regional resource adequacy metrics/standards to provide clarity regarding what constitutes generation sufficiency to meet the load serving obligation defined by the long-term Regional Dialogue contracts. These resource adequacy metrics/standards will also provide assurance that needed electrical infrastructure will be developed by Northwest load serving entities to allow the Northwest Power Act mandate of an adequate, economical, and reliable Northwest power system to be met even with BPA in a reduced power acquisition role.

Schedule: The following schedule is ambitious, but BPA agrees with the perspective of the Council and many customers that the region has a core interest in the earliest practical completion of this process.

SCHEDULE FOR ACHIEVING LONG-TERM CONTRACTS AND RATES

Milestone	Date
BPA Administrator Issues Long-Term Regional Dialogue Proposal for Public Review and Comment.	July 2005.
BPA Administrator Signs Long-Term Regional Dialogue Policy and Record of Decision.	Jan. 2006.
New Contracts Offered	Dec. 2006.
Contract Signature Deadline	April 2007.
Complete Establishment of Long-Term Rate Methodology to Accompany New Contracts.	Oct. 2008.
Earliest Contract Effective Date	Oct. 2008.

Challenges to Achieving Our Goal: Achieving this schedule will be challenging. Challenges that both customers and the agency will have to manage include:

1. Ability of BPA, customers, and other interests to find a solution to provide long-term benefits to residential and small-farm consumers of IOUs.

2. Ability to structure long-term contracts to protect taxpayer and ratepayer interests.

3. Finding mutually acceptable solutions to very contentious issues will be difficult, especially while other decision processes are running in parallel.

4. Developing regional resource adequacy metrics/standards to provide clarity and mechanisms to assure the development of needed electrical infrastructure.

5. Ability of customers and other interested parties to invest the necessary time, especially in view of the concurrent activity on BPA's FY 2007 power rate case and a variety of other issues.

6. Ensuring BPA and customers can administer new 20-year contracts for several years concurrent with contracts of customers who choose to retain their existing Subscription contracts through FY 2011. This could also result in two sets of rates through FY 2011 (one for Subscription contract holders and one from Regional Dialogue contract holders).

7. Willingness of customers to sign new 20-year contracts before the supporting rate case concludes.

V. Environmental Analysis

BPA has reviewed the final policy for environmental considerations under the National Environmental Policy Act (NEPA) in a NEPA ROD prepared separately from the Administrator's ROD. BPA has reviewed each of the individual policy issues, as well as the potential implications of these issues taken together. For some issues, there are no environmental effects resulting from implementation of the policy for that issue, and NEPA, thus, is not implicated. For other issues, the policy is merely a continuation of the status quo, and NEPA, thus, is not triggered.

For the remaining issues, any environmental effects resulting from the policy have already been addressed in the Business Plan Final Environmental Impact Statement, DOE/EIS–0183, June 1995 (Business Plan EIS), and the policy would not result in significantly different environmental effects from those described in this EIS. Furthermore, the policy is adequately covered within the scope of the Market-Driven Alternative identified and evaluated in the Business Plan EIS and adopted by BPA in the August 15, 1995, Business Plan ROD.

Evaluating all of the individual policy issues together, the final policy still does not represent a significant departure from BPA's adopted Market-Driven Alternative and would not result in significantly different environmental effects from those described in the Business Plan EIS.

BPA therefore has appropriately decided to tier the NEPA ROD for the final policy to the Business Plan ROD, as provided for in the Business Plan EIS and Business Plan ROD. Copies of the NEPA ROD for the final policy are available on BPA's Web site at *http://www.bpa.gov/power/regionaldialogue* or by contacting BPA's Public Information Center at (800) 622–4520.

Issued in Portland, Oregon on February 4, 2005.

Stephen J. Wright,

Administrator and Chief Executive Officer, Bonneville Power Administration.

[FR Doc. 05–2780 Filed 2–11–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–1435–009, ER96–2408–021, ER98–4336–010, and ER00–1814–004]

Avista Corporation, Avista Energy, Inc., Spokane Energy, LLC, and Avista Turbine Power, Inc.; Notice of Amendment of Filing

February 7, 2005.

Take notice that on February 4, 2005, Avista Corporation d/b/a Avista Utilities, Avista Energy, Inc., Spokane Energy, LLC, and Avista Turbine Power, Inc. filed an amendment their generation market power analysis filed

September 27, 2004, as amended on December 7, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on February 14, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–593 Filed 2–11–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–236–003]

Northeast Energy Associates, a Limited Partnership; Notice of Supplemental Filing

February 7, 2005.

Take notice that on February 3, 2005 Northeast Energy Associates, a Limited Partnership, (NEA) submitted a supplement to its application for market-based rate authority filed on November 18, 2004, as supplemental on November 30, 2004 and January 14, 2005, to correct certain exhibits.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all 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 online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on February 14, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–594 Filed 2–11–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2004–0023, FRL–7872–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Health Effects of Microbial Pathogens in Recreational Waters; National Epidemiological and Environmental Assessment of Recreational (NEEAR) Water Study, EPA ICR Number 2081.02, OMB Control Number 2080.0086

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire onAugust 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 15, 2005.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2004–0023, to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Auby, Environmental Protection Agency, Office of Information Collection, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1672; fax number: (202) 566–1753; e-mail address: *auby.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number ORD–2004–0023, which is available for public viewing at the Office of Research and Development Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the

Reading Room is (202) 566–1744, and the telephone number for the Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are families frequenting fresh and marine water beaches in the continental United States.

Title: Health Effects of Microbial Pathogens in Recreational Waters.

Abstract: The purpose of this study is to examine the health effects of families in recreational water beach areas. This study will be conducted, and the information collected, by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency (EPA). Participation of adults and children in this collection of information is strictly voluntary. This information is being collected as part of a research program consistent with the Section 3(a)(v)(1) of the Beaches Environmental Assessment and Coastal Health Act of 2000 and the strategic plan for EPA's Office of Research and Development (ORD) and the Office of Water entitled ''Action Plan for Beaches and Recreational Water.'' The Beaches Act and ORD's strategic plan has identified research on effects of microbial pathogens in recreational waters as a high-priority research area with particular emphasis on developing new water quality indicator guidelines for recreational waters. The EPA has broad legislative authority to establish water quality criteria and to conduct research to support these criteria. This data collection is for a series of epidemiological studies to evaluate exposure to and effects of microbial pathogens in marine and fresh recreational waters as part of the EPA's research program on exposure and health effects of microbial pathogens in recreational waters. Health effects data collection was previously conducted in a pilot study and four freshwater coastal sites under OMB number 2080.0068 (expires August 31, 2005), ICR number 2081.01. The results will be used to develop mathematical relationships that will be used for the generation of new national water quality and monitoring guidelines. The questionnaire health data will be compared with routinely collected water quality measurements. The analysis will focus on determining whether any water quality parameters are associated with increased prevalence of swimming-related health effects.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average about fifteen minutes per response. If a participant completes all portions of the data collection, a total 45 minutes. Beach Interviews & Telephone Follow-ups: Based on consultation with the individuals listed in Section 3(c) of the ICR, and our experience with similar types of information collection, we estimate that each family will spend an average of 30 minutes completing the beach interview and will require no recordkeeping. This includes the time for reviewing the information pamphlet and answering the questions. We estimate that each family spends an average of 15 minutes completing the home telephone interview. The telephone interviews will require no recordkeeping.

All human health data collection will be recorded utilizing computer-assisted personal interviews (CAPI). The telephone interview incorporates the same concept of direct data collection in a desk personal computer (PC) setting. The tablet notebooks and desk PCs are used by interviewers to collect human health data. Screens on these tablets and PCs only display current activated questions. All human health data is stored in secured locations to maintain confidentiality.

Respondent activities	Estimated number of respondents	Burden hours	Frequency	Total burden hours	Total burden cost
Beach Interview and Phone Interview	7,000	0.25	1	1,750	[a] 25,760
Beach Interview (Part A)	7,000	0.25	1	1,750	[a] 25,760
Phone Interview	7,000	0.25	1	1,750	[a] 25,760
Total	21,000	0.75	3	5,250	[a] 77,280

[a] $14.72/hour.

There is no direct respondent costs for this data collection.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Dated: January 27, 2005.

Harold Zenick,

Associate Director of Health.

[FR Doc. 05–2793 2–11–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7872–8]

Proposed Settlement Agreement, Clean Air Act Petition for Review

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a settlement agreement to address a claim raised by Alcoa, Inc. (''Alcoa'') in a petition for review filed in the United States Court of Appeals for the District of Columbia Circuit. *Alcoa, Inc.* v. *United States Environmental Protection Agency,* No. 04–1189 (D.C. Cir.) This lawsuit, which was filed pursuant to section 307(b) of the Act, 42 U.S.C. 7607(b), challenged EPA's designation of the Evansville, Indiana area as nonattainment for the 8-hour ozone national ambient air quality standard (''NAAQS'') pursuant to section 107(d)(1) of the Act, 42 U.S.C. 7407(d)(1). The proposed settlement agreement provides that if the State of Indiana submits a request to redesignate the Evansville area to attainment for the 8-hour ozone NAAQS, EPA shall determine whether the submission is complete and, if so, propose and take final action on the request within specified periods of time.

DATES: Written comments on the proposed settlement agreements must be received by March 16, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2005–0001, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

SUPPLEMENTARY INFORMATION: Alcoa, Inc. (''Alcoa'') challenged EPA's designation of the Evansville, Indiana area as nonattainment for the 8-hour ozone NAAQS. The nonattainment designation was based on air quality monitoring data from 2001, 2002 and 2003.

Alcoa and EPA understand that the State of Indiana plans to submit shortly a request to redesignate the Evansville area from nonattainment to attainment for the 8-hour ozone NAAQS, based on air quality monitoring data from 2002, 2003 and 2004. The Settlement Agreement provides that within 30 days following an official submission by the State of Indiana, requesting redesignation of the Evansville area, EPA shall determine whether the submission is complete. If EPA determines that the official submission is complete, EPA shall, within 60 days of the completeness determination, sign a notice of proposed action soliciting comment on the redesignation request and shall forward that notice to the **Federal Register** for publication. Within 60 days after the close of the public comment period, EPA shall sign a notice taking final action on the redesignation request.

If Indiana does not submit an official submission to EPA by July 1, 2005, Alcoa has the right to move the Court to reactivate the litigation and the right to move to reactivate expires September 1, 2005. If EPA does not comply with the deadlines under the Settlement Agreement, the sole remedy for Alcoa is the right to request the Court to reactivate the litigation.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Settlement Agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Settlement Agreement will be final.

Dated: January 26, 2005.

Richard B. Ossias,

Acting Associate General Counsel.

[FR Doc. 05–2794 Filed 2–11–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0010; FRL–7699–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which

covers the period from January 1, 2005 to January 19, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2005–0010 and the specific PMN number or TME number, must be received on or before March 16, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2005–0010. 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2005–0010. 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 *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0010 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–20050010 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 1, 2005 to January 19, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 23 PREMANUFACTURE NOTICES RECEIVED FROM: 01/01/05 TO 01/19/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0223	01/04/05	04/03/05	CBI	(G) Polymer dispersant admixture	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), potassium salt
P–05–0224	01/04/05	03/20/05	CBI	(G) Polymer dispersant admixture	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), calcium potassium salt
P–05–0225	01/05/05	04/04/05	CBI	(G) Plating agent	(G) Imidazole, reaction products with trimethoxy[3-(oxiranylmethoxy)propyl]silane
P–05–0226	01/06/05	04/05/05	CBI	(G) Colorant for cleaning products	(G) Polyalkoxylated aromatic colorant
P–05–0227	01/06/05	04/05/05	CBI	(G) Chemical intermediate	(G) Alkoxylated aromatic amine
P–05–0228	01/07/05	04/06/05	PMC Specialities Group, Inc. for Raschig Corporation	(G) Functional monomer in polymers.	(S) 1-propanaminium, n,n-dimethyl-n-[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl]-3-sulfo-,inner salt
P–05–0229	01/07/05	04/06/05	KAO Specialties Americas LLC	(S) Emulsifier in metalworking fluids; thickener and foam booster in dishwashing agent and car shampoo	(S) Amides, rape-oil, n-(hydroxyethyl),ethoxylated
P–05–0230	01/11/05	04/10/05	CBI	(G) Dispersing property of the polymer along with it's hydrophobic content leads it to application in both industrial and consumer laundry and dishwashing, where the polymer can disperse soils and mineral hardness; application is also found for industrial pigment dispersion.	(G) Methacrylic acid, styrene copolymer sodium salt
P–05–0231	01/11/05	04/10/05	CBI	(G) Dispersing property of the polymer along with it's hydrophobic content leads it to application in both industrial and consumer laundry and dishwashing, where the polymer can disperse soils and mineral hardness; application is also found for industrial pigment dispersion.	(G) Methacrylic acid, styrene copolymer ammonium salt
P–05–0232	01/11/05	04/10/05	CBI	(G) Dispersing property of the polymer along with it's hydrophobic content leads it to application in both industrial and consumer laundry and dishwashing, where the polymer can disperse soils and mineral hardness; application is also found for industrial pigment dispersion.	(G) Methacrylic acid, methyl methacrylate copolymer sodium salt
P–05–0233	01/11/05	04/10/05	CBI	(G) Dispersing property of the polymer along with it's hydrophobic content leads it to application in both industrial and consumer laundry and dishwashing, where the polymer can disperse soils and mineral hardness; application is also found for industrial pigment dispersion.	(G) Methacrylic acid, methyl methacrylate copolymer potassium salt
P–05–0234	01/11/05	04/10/05	CBI	(G) Dispersing property of the polymer along with it's hydrophobic content leads it to application in both industrial and consumer laundry and dishwashing, where the polymer can disperse soils and mineral hardness; application is also found for industrial pigment dispersion.	(G) Methacrylic acid, methyl methacrylate, acrylic acid copolymer sodium salt

I. 23 PREMANUFACTURE NOTICES RECEIVED FROM: 01/01/05 TO 01/19/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0235	01/11/05	04/10/05	CBI	(G) Dispersing property of the polymer along with it's hydrophobic content leads it to application in both industrial and consumer laundry and dishwashing, where the polymer can disperse soils and mineral hardness; application is also found for industrial pigment dispersion.	(G) Methacrylic acid, methyl methacrylate, acrylic acid copolymer potassium salt
P–05–0236	01/12/05	04/11/05	Eastman Chemical Company	(G) Non-dispersive industrial use in adhesives	(G) Aromatic-modified aliphatic hydrocarbon resin
P–05–0237	01/12/05	04/11/05	CBI	(G) Rubber elastomer for tires, wheels, rolls and other specialty urethane applications.	(G) Hdi/carbonate/caprolactone/ether prepolymer
P–05–0238	01/13/05	04/12/05	CBI	(G) Melt processible resin and solution processible resin.	(G) Polyurethane hydrogel
P–05–0239	01/13/05	04/12/05	CBI	(G) Fuel additive	(G) Butanedioic acid, monopolyisobutylene derivs., ethylene esters, compounds with alkanolamine (1:2)
P–05–0240	01/18/05	04/17/05	Halox - A Division of Hammond Group, Inc.	(S) Corrosion inhibitor additive for paint	(S) 1,3-propanediamine, n,n-dimethyl-, monobenzozoate
P–05–0241	01/18/05	04/17/05	CBI	(G) Processing aid	(G) Glucomannan
P–05–0242	01/19/05	04/18/05	Cytec Industries Inc.	(G) Blocked catalyst for molded plastic parts.	(S) Ethanol, 2-(diethylamino)-,acetate(salt)
P–05–0243	01/19/05	04/18/05	CBI	(G) Coating material	(G) Alkanoic acid, alkyl-, alkyl ester, polymer with cycloalkyl-pyrroledione and alkenylbenzene
P–05–0244	01/19/05	04/18/05	CBI	(G) Component of mixture for highly dispersive applications.	(G) Substituted cycloalkenone
P–05–0245	01/19/05	04/18/05	CBI	(G) Adhesives	(G) Alkyl acrylic-methacrylic-vinylic copolymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 23 NOTICES OF COMMENCEMENT FROM: 01/01/05 TO 01/19/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0296	01/05/05	12/24/04	(S) Carbamic acid, [(trimethoxysilyl)methyl]-, methyl ester
P–04–0317	01/05/05	12/24/04	(S) Cyclohexanamine, n-[(triethoxysilyl)methyl]-
P–04–0404	01/11/05	12/21/04	(G) Tetrabromophthalate diol diester
P–04–0544	01/04/05	11/24/04	(G) Polymer
P–04–0625	01/13/05	12/12/04	(G) Dibutylhexadecylhydroxyethylammoniumbromide
P–04–0633	01/12/05	12/21/04	(G) Poly (oxyethylene) alkenyl ether
P–04–0658	01/05/05	12/24/04	(S) 2-propenoic acid, 2-methyl-, (triethoxysilyl)methyl ester
P–04–0664	01/04/05	12/02/04	(S) Oxirane, methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1), monoacetate monohexadecanoate
P–04–0664	01/04/05	12/02/04	(S) Oxirane, methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1), monoacetate
P–04–0667	01/04/05	12/03/04	(S) Hexanedioic acid, polymer with 1,4-butanediol, 1,3-diisocyanatomethylbenzene, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, .alpha.,.alpha.'-[(1-methylethylidene)di-4,1-phenylene]bis[.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)]] and piperazine, compound with n,n-diethylethanamine
P–04–0704	01/05/05	12/27/04	(G) Polymer of carboxylic acids, glycols, and epoxy resin.
P–04–0749	01/12/05	12/21/04	(G) Polycarboxylated derivertive
P–04–0750	01/12/05	12/21/04	(G) Polycarboxylated derivertive
P–04–0800	01/05/05	12/23/04	(G) Modified styrene polymer
P–04–0831	01/10/05	12/22/04	(G) Aliphatic soluble acrylic polymer on the basis of isobutyl methacrylate
P–04–0833	01/05/05	12/27/04	(G) Alkyd resin
P–04–0838	01/06/05	12/14/04	(G) Copolymer of acrylic acid and styrene
P–04–0873	01/10/05	12/22/04	(G) Acrylic polymer on the basis of isobutyl methacrylate

II. 23 NOTICES OF COMMENCEMENT FROM: 01/01/05 TO 01/19/05—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0874	01/10/05	12/22/04	(G) Acrylic polymer on the basis of methacrylates
P–04–0884	01/06/05	12/29/04	(G) Urethane acrylate
P–04–0915	01/06/05	01/04/05	(G) Styrene-methacrylate copolymer
P–04–0916	01/06/05	01/04/05	(G) Styrene-methacrylate copolymer
P–04–0917	01/06/05	01/04/05	(G) Styrene-methacrylate copolymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: February 8, 2005.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–2790 Filed 2–11–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 28, 2005.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 16, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0833.

Title: Implementation of Section 255 of the Telecommunications Act of 1996: Complaint Filings/Designation of Agents.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; businesses or other for-profit entities; not-for-profit institutions, Federal government; and State, local or tribal governments.

Number of Respondents: 8,677 respondents (multiple responses).

Estimated Time per Response: 0.50–5.0 hours.

Frequency of Response: Recordkeeping; On occasion and one time reporting requirements; Third party disclosure requirement.

Total Annual Burden: 12,338 hours.

Total Annual Cost: $720,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This information collection includes rules governing the filing of complaints as part of the implementation of Section 255 of the Telecommunications Act of 1996, which seeks to ensure that telecommunications equipment and services are available to all Americans, including those individuals with disabilities. In particular, telecommunications service providers and equipment manufacturers are asked for a one-time designation of an agent who will receive and promptly handle voluntary consumer complaints of accessibility concerns. As with any complaint procedure, a certain number of regulatory and information burdens are necessary to ensure compliance with FCC rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–2500 Filed 2–11–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 04–12]

Non-Vessel-Operating Common Carrier Service Arrangements

Served: February 8, 2005.

Order

The Commission's rule exempting non-vessel-operating common carriers (NVOCCs) from the Shipping Act's tariff publication requirements, conditioned upon the filing of confidential service arrangements (NSAs), went into effect on January 19, 2005. 69 FR 75850 (Dec. 20, 2004). The International Shippers' Association (ISA) and the American Institute for Shippers' Associations (AISA) have filed petitions seeking reconsideration of the new rule, and asking the Commission to stay the effectiveness of that rule.[1] Both petitions were filed under Rule 261 of the Commission's Rules of Practice and Procedure; both also seek a waiver, under Rule 10, if the Commission finds them deficient under Rule 261.

For the reasons set forth below, we summarily reject both petitions, pursuant to Rule 261. We further deny the requests for waiver under Rule 10, and deny the requests for stay as moot.

[1] ISA's petition was filed on January 7, 2005, and AISA's petition was filed on January 11. The 15 day comment periods for both petitions extended beyond the scheduled effective date of the new rule. *See* 46 CFR 502.74. However, neither petitioner requested a shorter comment period for consideration of its request for a stay. *See* 46 CFR 502.103 (time may be shortened ''for good cause'').

I. Background

Both ISA and AISA participated in the NSA rulemaking by filing comments, and both objected to the Commission's determination not to allow NVOCCs, in their capacity as shippers, to enter into NSAs. They disagreed with the Commission's decision to define ''NSA shipper'' as excluding ''NVOCCs or shippers' associations whose membership includes NVOCCs.'' 46 CFR 531.3(o). ISA and AISA now contend that in the rulemaking process, the Commission failed to consider their arguments; acted beyond its statutory authority in enacting the new rule; failed to adequately analyze the rule's potential effects on competition between large NVOCCs and smaller NVOCCs; and improperly regulated the membership of shippers' associations.

Two joint replies in opposition to the petitions were filed by the National Industrial Transportation League, United Parcel Service, BAX Global, FedEx Trade Networks Transport & Brokerage, the Transportation Intermediaries Association, C.H. Robinson Worldwide, and BDP International. The first joint reply addresses the two petitions' request for a stay of the rule's effective date, arguing that a stay is not warranted. The second joint reply contends that the substantive arguments advanced by the two petitioners are erroneous. In particular, the second joint reply argues that the Commission did make adequate findings concerning the new rule's potential effects on competition, and that the new rule is within the agency's statutory authority under section 16 of the Shipping Act, 46 U.S.C. app. 1715.

II. Discussion

Both petitions were filed pursuant to the Commission's Rule 261. That rule provides:

> (a) Within thirty (30) days after issuance of a final decision or order by the Commission, any party may file a petition for reconsideration * * *. A petition will be subject to summary rejection unless it:
>
> (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order;
>
> (2) Identifies a substantive error in material fact contained in the decision or order; or
>
> (3) Addresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment or which was not addressed in the briefs or arguments of any party. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. A petition shall be verified if verification of the original pleading is required and shall not operate as a stay of any rule or order of the Commission.

46 CFR 502.261(a).

We conclude that the two petitions have failed to meet any one of these standards. First, neither petition alleges that there has been a ''change in material fact or in applicable law'' subsequent to the issuance of the Commission's new rule. Neither petition cites an intervening judicial decision published subsequent to the issuance of the Commission's rule, nor to any alleged changes in material fact.

Second, neither petition seeks to identify ''a substantive error in material fact'' within the Commission's new rule. On the contrary, both petitions contend that the Commission reached an erroneous *legal* conclusion. As the text of Rule 261 makes clear, however, this is not an acceptable ground for seeking reconsideration.

Finally, neither ISA nor AISA contends that it did not have the opportunity to comment on any provision of the rule. Indeed, AISA even incorporates by reference its previously filed comments, in lieu of reiterating them. *See* AISA Petition at 2.

Pursuant to the standards of Rule 261, both petitions will be summarily rejected. *See* 46 CFR 502.261 (petitions failing to meet threshold standard for reconsideration ''will be'' summarily rejected). Both petitioners also request, if their petitions are deemed subject to summary rejection, that the Commission instead grant a waiver of Rule 261's requirements, pursuant to Rule 10. That rule provides:

> Except to the extent that such waiver would be inconsistent with any statute, any of the rules in this part, except §§ 502.11 and 502.153, may be waived by the Commission or the presiding officer in any particular case to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires.

46 CFR 502.10.

Neither petition sets forth an argument why summary rejection would constitute ''undue hardship'' or ''manifest injustice,'' and neither contends that the ''expeditious conduct of business'' requires a waiver. Accordingly, the Commission concludes that ''undue hardship'' or ''manifest injustice'' will not arise from the summary rejection of the two petitions for reconsideration. The requests for a waiver are denied.

Finally, both petitions ask the Commission to stay the effective date of the new rule. As mentioned, the rule went into effect on January 19. The requests for stay are denied as moot.

III. Conclusion

We summarily reject the two petitions for reconsideration, decline to authorize a waiver under Rule 10, and deny the requests for stay as moot.

Therefore, it is ordered, That the petitions are denied.

By the Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 05–2796 Filed 2–11–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's

functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before April 15, 2005.

ADDRESSES: You may submit comments, identified by FR 2226, FR 2225, FR Y–3, FR Y–3N, FR Y–4, or FR K–1, by any of the following methods:

- Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E–mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Report of Net Debit Cap
Agency form number: FR 2226
OMB control number: 7100–0217
Frequency: Annual
Reporters: Depository institutions, Edge and agreement corporations, U.S. branches and agencies of foreign banks
Annual reporting hours: 1,780 hours
Estimated average hours per response: 1.0 hour
Number of respondents: 1,785
General description of report: This information collection is mandatory (12 U.S.C. 248(i), 248–l, and 464) and may be accorded confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).

Abstract: Federal Reserve Banks collect these data annually to provide information that is essential for their administration of the Board's Payments System Risk policy. The Report of Net Debit Cap comprises three resolutions, which are filed by an institution's board of directors depending on the institution's needs. The first resolution is used to establish a de minimis net debit cap, and the second resolution is used to establish a self–assessed net debit cap. Institutions use these two resolutions to establish a capacity for daylight overdrafts that is greater than the capacity that is typically assigned by a Reserve Bank. Institutions use part one of the third resolution, a two–part resolution, to establish additional collateralized capacity. Institutions use part two of the third resolution if they have been approved to receive additional collateralized capacity and pledge securities in transit to support the additional capacity. Copies of the current model resolutions are located in Appendix B of the Guide to the Federal Reserve's Payments System Risk policy.

Proposal to approve under OMB delegated authority the extension for three years, with revision of the following reports:

1. Report title: Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks
Agency form number: FR 2225
OMB control number: 7100–0216
Frequency: Annual
Reporters: Foreign banks with U.S. branches or agencies
Annual reporting hours: 42 hours
Estimated average hours per response: 1.0 hour
Number of respondents: 42
General description of report: This information collection is voluntary (12 U.S.C. 248(i), 248–l, and 464) and is not given confidential treatment.

Abstract: This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve Board's Payments System Risk (PSR) policy. A key component of the PSR policy is a limit, or a net debit cap, on an institution's negative intraday balance in its Federal Reserve account. The Federal Reserve calculates an institution's net debit cap by applying the multiple associated with the net debit cap category to the institution's capital. For foreign banking organizations (FBOs), a percentage of the FBO's capital measure, known as the U.S. capital equivalency, is used to calculate the FBO's net debit cap. Currently, an FBO with U.S. branches or agencies may voluntarily file the FR 2225 to provide the Federal Reserve with its capital measure. Because an FBO that files the FR 2225 may be able to use its total capital in the net debit cap calculation, an FBO seeking to maximize its daylight overdraft capacity may find it advantageous to file the FR 2225. An FBO that does not file FR 2225 may use an alternative capital measure based on its nonrelated liabilities.

Current Actions: The Federal Reserve proposes minor revisions to the FR 2225 reporting form and instructions to make the reporting of foreign currency translations consistent with the reporting requirements detailed in other Federal Reserve information collections, resulting in the deletion of an item from the form.

2. Report titles: Application for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; Notice for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; and Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities
Agency form numbers: FR Y–3, FR Y–3N, and FR Y–4
OMB control number: 7100–0121
Frequency: Event–generated
Reporters: Corporations seeking to become bank holding companies (BHCs), or BHCs and state chartered banks that are members of the Federal Reserve System
Annual reporting hours: 19,100 hours
Estimated average hours per response:
FR Y–3, Section 3(a)(1): 49 hours;

FR Y–3, Section 3(a)(3) and 3(a)(5): 59.5 hours;

FR Y–3N, Sections 3(a)(1), 3(a)(3), and 3(a)(5): 5 hours;

FR Y–4, complete notification: 12 hours;

FR Y–4, expedited notification: 5 hours; and

FR Y–4, post–consummation: 0.5 hours.

Number of respondents: 556

General description of reports: This information collection is mandatory (12 U.S.C. 1842(a), 1844(b), and 1843(j)(1)(b)) and may be accorded confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4)).

Abstract: The Federal Reserve requires the application and the notifications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Bank Holding Company Act of 1956. The forms collect information concerning proposed BHC formations, acquisitions, and mergers, and proposed nonbanking activities. The Federal Reserve must obtain this information to evaluate each individual transaction with respect to permissibility, competitive effects, adequacy of financial and managerial resources, net public benefits, and impact on the convenience and needs of affected communities.

Current Actions: The proposed modifications are technical in nature, as no material change in the relevant statutes and regulation has occurred since 2001. The proposed changes improve consistency within the three reporting forms, clarify certain language, and provide additional practical guidance to filers to reduce or avoid processing delays in the applications process. The reporting forms also have been modified to reflect substantial applications guidance and related reference material that was added to the Federal Reserve Board's public website in May 2004. Each proposed change is intended to facilitate and clarify the overall filing process for a BHC.

3. Report title: International Applications and Prior Notifications under Subparts A and C of Regulation K

Agency form number: FR K–1

OMB control number: 7100–0107

Frequency: Event–generated

Reporters: State member banks, national banks, bank holding companies, Edge and agreement corporations, and certain foreign banking organizations

Annual reporting hours: 772 hours

Estimated average hours per response: Attachments A and B, 11.5 hours; Attachments C through G, 10 hours; Attachments H and I, 15.5 hours; Attachment J, 10 hours; Attachment K, 20 hours

Number of respondents: 43

General description of report: This information collection is mandatory (12 U.S.C. 601–604(a), 611–631, 1843(c)(13), 1843(c)(14), and 1844(c)) and is not given confidential treatment. The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Abstract: The FR K–1 comprises a set of applications and notifications that govern the formation of Edge or agreement corporations and the international and foreign activities of U.S. banking organizations. This set of applications and notifications is in the form of eleven attachments (labeled attachment A through K) and they collect information on projected financial data, purpose, location, activities, and management. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956.

Current Actions: The Federal Reserve proposes minor revisions to the applications and notifications in order to improve clarity, more accurately reflect what information U.S. banking organizations should provide, and request information that is considered necessary in evaluating proposals. Attachment A, Item 11, and Attachment B, Item 5, would be slightly modified by removing the parenthetical statement regarding operations of the branch and adding the words ''assets and liabilities.'' Attachment C, Item 7.a would be modified to remove the existing parenthetical about Edge corporation capitalization, which is considered no longer necessary. Attachment C, Item 9, would be modified to remove the word ''banking'' from the first line to reflect the fact that the item should be submitted by all foreign institutions, not just foreign banking institutions. Attachments H and I would be revised by adding a new question related to the Federal Reserve's access to information. This new question requests the same information for foreign investments that is currently requested for foreign branches and is considered necessary in evaluating proposals. Attachments H and I would also be modified to add a footnote to clarify that the form should not be used for investments made by a bank holding company using financial holding company authority. The Regulation K section citations on Attachment H would be corrected to accurately reflect when the form should be used.

Board of Governors of the Federal Reserve System, February 8, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–2740 Filed 2–11–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. The Brian C. Barenscheer 2004 Revocable Trust – A, Minneapolis, Minnesota; Charles F. Diessner, trustee, Maple Grove, Minnesota; James P. Barenscheer, trustee, Bloomington, Minnesota; and John M. MacKany, trustee, Eden Prairie, Minnesota; to retain voting shares of American Bancorporation, St. Paul, Minnesota, and thereby indirectly retain voting shares of Olivia Bancorporation, Inc., St. Paul, Minnesota; American Bank of St. Paul, St. Paul, Minnesota, and American State Bank of Olivia, Olivia, Minnesota.

2. The Brian C. Barenscheer 2004 Revocable Trust – B, Minneapolis, Minnesota; Charles F. Diessner, trustee, Maple Grove, Minnesota; James P. Barenscheer, trustee, Bloomington, Minnesota; and John M. MacKany, trustee, Eden Prairie, Minnesota; to retain voting shares of Citizens Bancshares of Woodville, Inc., Woodville, Wisconsin, and thereby indirectly to retain voting shares of

Citizens State Bank, Hudson, Wisconsin.

Board of Governors of the Federal Reserve System, February 8, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–2774 Filed 2–11–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Head Start National Training and Technical Assistance System Quality Assurance Study.

OMB No: New collection.

Description: The Head Start National Training and Technical Assistance Quality Assurance Study is being undertaken to document and provide feedback on the work of the newly designed Head Start Training and Technical Assistance (T/TA) system. The Head Start Bureau awarded this contract to Mathematica Policy Research, Inc., and its subcontractor, Xtria LLC, in October 2004.

Providing training and technical assistance has long been a crucial component of the national-regional Head Start system. Through the new T/TA system, however, the Head Start Bureau has placed greater emphasis on quality and consistency of T/TA service delivery. Under the new T/TA system, the Head Start Bureau's T/TA Branch annually sets national priorities. Regional Office T/TA liaisons oversee the system's 12 contracts, awarded in December 2003, which include locally based content experts in the areas of disabilities, early literacy, child development, fiscal administration and management, health, and family and community partnerships. These content experts support locally based TA specialists (TAS), who work with a caseload of 10 to 12 programs to develop T/TA training plans based on each grantee's self-assessment and the results from the Program Review Instrument for Systems Monitoring (PRISM) process. National contractors provide training and other resources according to priorities determined by the Head Start Bureau and in line with Administration initiatives. Programs can also use their special T/TA grant funds and, when necessary, additional funds from their basic Head Start grant funds to hire consultants or attend training events.

In addition, through Higher Education Grants, universities provide coursework to meet Head Start staff's credentialing needs in partnership with Head Start programs. The Higher Education grantees (HEGs) are organized into three consortia, representing Historically Black Colleges and Universities, Tribal Colleges and Universities and Hispanic/Latino-serving institutions.

For the regional Head Start system, the Quality Assurance Study will assess (1) each Head Start region's implementation and structure of the new system, (2) regional T/TA strategies and services provided to grantees, (3) grantees' progress in assessing T/TA needs and identifying appropriate ways to meet those needs, (4) grantees' annual T/TA plans, and (5) grantees' perceptions about the system's impact on program quality and child outcomes. The study also will analyze whether the HEGs meet their goal of increasing the early childhood credentials of Head Start staff and teachers. In 2005, the study will collect information about the delivery of T/TA services to Head Start and Early Head Start programs through site visits to 48 representative programs (about 4 per region) and site visits to 15 HEGs (5 of each of the 3 types of HEGs). In 2006, the study will visit 36 of the 48 representative Head Start and Early Head Start programs to learn about changes in the T/TA system. All data collection activities have been designed to minimize the burden on respondents by minimizing the time required to respond. Participation in the study is voluntary.

The research will provide the Head Start Bureau and the Administration for Children and Families with information about exemplary practices as well as areas in the T/TA system that could be improved.

Respondents: Early Head Start and Head Start directors, coordinators, specialists, center administrators, teachers and home visitors; locally based TA specialists; university-based HEG project directors, university faculty, Head Start program administrators, and Head Start program staff and teachers.

ESTIMATED RESPONSE BURDEN FOR RESPONDENTS FOR THE HEAD START T/TA QUALITY ASSURANCE STUDY

Instrument	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
Program Site Visit Protocols (2005)				
Director	48	1	1.5	72
Coordinator/Specialist (group)	144	1	1.25	180
Center Administrator (group)	288	1	1.25	360
Teacher/Home Visitor (group)	480	1	1.25	600
Locally Based TA Specialist	48	1	1.5	72
Program Reviews [a]	48	1	.5	24
HEG Site Visit Protocols (2005)				
HEG Project Director/Coordinator	15	1	1.5	22.5
HEG Staff/Faculty (group)	45	1	1	45
HS Director	30	1	1	30
HS Staff (group)	60	1	1	60
Total for 2005				1,465.5
Grantee Site Visit Protocols (2006)				
Director	36	1	1.5	54
Coordinator/Specialist (group)	108	1	1.25	135

ESTIMATED RESPONSE BURDEN FOR RESPONDENTS FOR THE HEAD START T/TA QUALITY ASSURANCE STUDY—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
Center Administrator (group)	216	1	1.25	270
Teacher/Home Visitor (group)	360	1	1.25	450
Locally Based TA Specialist	36	1	1.5	54
Program Reviews [a]	36	1	.5	18
Total for 2006				981
Total for 2005 and 2006				2,446.5
Estimated Average Burden Hours				1,223.25

[a] These reviews will be conducted with the locally based TA specialists.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 4, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–2744 Filed 2–11–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health/National Institute of Environmental Health Sciences; Proposed Collection; Comment Request; Active Living by Design Program Evaluation

Summary: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institute of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Active Living by Design Program Evaluation.

Type of Information Collection Request: New.

Need and Use of Information Collection: The purpose of this study is to provide NIEHS with an overall evaluation of the Active Living by Design (ALbD) program to determine the extent to which program strategies to increase physical activity influence change, as measured by increased physical activity and reduction of Body Mass Index (BMI), in residents of participating communities. The two objectives of this study are to determine:

- The degree to which the changes in the built environment, communication strategies and policy as a result of ALbD's program has impacted physical activity and BMI in residents within the twenty-five (25) participating communities relative to a set of ten (10) control communities; and
- The degree to which the ALbD program's communication strategies has positively impacted residents' knowledge and perceptions of features and conditions that impede and facilitate physical activity within their (participating) communities.

Two types of data collection will occur throughout the study. A telephone and Internet survey, which relies on self-reports, will be conducted on a large sample of the population. A smaller population sample will be used during clinical surveys, which will collect physical activity data using measures of physical activity such as, accelerometers; measures of BMI and include a face-to-face interview on respondents' perceptions of their neighborhood. The findings of this study will provide valuable information concerning: (1) The direct impact ALbD strategies have on increasing physical activity and bringing about positive changes in health associated with exercise, such as weight loss: (2) possible reduction of health risks and diseases related to physical inactivity through implementation of ALbD strategies.

Frequency of Response: Three times over a period of five (5) years; specifically during study years One (1), Three (3), and Five (5).

Affected Public: Individuals or households.

Type of Respondents: Respondents to telephone and internet surveys, includes adults, children ages 12 through 17 years and parents responding on behalf of children ages 6 through 11; Respondents to clinical surveys, includes adults and children ages 6–17. The clinical procedures require respondents under 18 years of age to be accompanied by their parent/guardian, therefore the burden has been doubled for these respondents. The annual reporting burden is represented in the following table:

Type of respondents	Estimated Number of respondents	Estimated Number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Respondents to Telephone and Internet Surveys	7,000	1	.334	2,338
Respondents to Clinical Study Phase—Adults	1,855	1	.9185	1,703.8175
Respondents to Clinical Study Phase—Children/Parent	595	1	1.837	1,093,015
Total				5,134.8325

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request For Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Shobha Srinivasan, PhD., Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–21, 111 T.W. Alexander Drive, RTP, NC 27709. Phone: (919) 541–2506. Fax: (919) 316–4606. E-mail: *ss688k@nih.gov.*

Comments due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: February 2, 2005.

Richard Freed,

NIEHS, Associate Director for Manage

[FR Doc. 05–2772 Filed 2–11–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Agricultural Health Study: A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture

Summary: In compliance with the requirement of Section 3506(c0(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture: Phase III. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of this information collection is to update occupational and environmental exposure information as well as medical history information for subjects enrolled in the in the Agriculture Health Study. The primary objectives of the study are to determine the health effects resulting from occupational and environmental exposures in the agricultural environmental. The findings will provide valuable information concerning the potential link between agricultural exposures and cancer and other chronic diseases among agricultural Health Study cohort members, and this information may be generalized to the entire agricultural community. *Frequency of Response:* Single time reporting. *Affected Public:* Individuals or households; farms; *Type of Respondents:* Licensed pesticide applicators and their spouses. The annual reporting burden is as follows: *Estimated Number of Respondents:* 74,714; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.6179; and *Estimated Total Annual Burden Hours Requested:* 46,166. The annualized cost to respondents is estimated at: $461,660.00. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated Number of respondents	Estimated Number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Private Applicators	40,821	1.0	0.6179	25,223
Spouses	30,992	1.0	0.6179	19,149
Commercial Applicators	2,901	1.0	0.6179	1,793
Total	74,714	1.0	0.6179	46,165

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Michael C. R. Alavanja, DrPH, Occupational and Environmental Epidemiology Branch, Epidemiology and Biostatistics Program, Division of Cancer Epidemiology and Genetics, National Cancer Institute, 6120 Executive Boulevard, Room 8000, Bethesda, MD 20892k, or call (301) 435–4720, or e-mail your request, including your address to: *alavanjm@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-day of the date of this publication.

Dated: February 7, 2005.

Rachelle Ragland-Green,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 05–2773 Filed 2–11–05; 8:45 am]

BILLING CODE 4104–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20264]

National Maritime Security Advisory Committee

AGENCY: U.S. Coast Guard, DHS.

ACTION: Notice of meeting and announcement of membership.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC) will hold its inaugural meeting to discuss various issues relating to national maritime security. This notice announces the date, time, and location for the first meeting of the NMSAC. It also announces the members appointed to the Committee.

DATES: NMSAC will meet on Thursday, March 3, 2005, from 9 a.m. to 5 p.m. and Friday, March 4, 2005, from 8 a.m. to 12:30 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 18, 2005. Any material requested to be distributed to each member of the Committee should reach the Coast Guard on or before February 23, 2005.

ADDRESSES: NMSAC will meet in the Conference Center at the Sheraton Suites, Old Town, 801 North St. Asaph St., Alexandria, VA. Send written material and requests to make oral presentations to LCDR Bruce Walker, Commandant (G–MPS–2), U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0002. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: LCDR Bruce Walker, Assistant to the Executive Director, telephone 202–267–4148, fax 202–267–4130.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisor Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770).

Agenda of Meeting

The agenda includes the following for both days:

(1) Introduction and swearing-in of the new members.

(2) Briefings by Department of Homeland Security officials on national maritime security issues.

(3) New committee business.

(4) Staff administration issues.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant to the Executive Director no later than February 18, 2005. If you would like a copy of your material distributed to each member of the Committee in advance of the meeting, please submit 25 copies to the Executive Director no later than February 23, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant to the Executive Director as soon as possible.

Membership

The twenty members appointed to the NMSAC on December 29, 2004, by the Secretary, Department of Homeland Security are: Mr. Christopher Louis Koch, President and CEO, World Shipping Council; Mr. Joseph H. Langjahr, Vice President & General Counsel, Foss Maritime Company; Mr. Thomas E. Thompson, Executive Vice President, International Council of Cruise Lines; Mr. John C. Dragone, Vice President, Operating Division, Maritrans Operating Company, L.P.; Ms. Mary Frances Culnane, Manager, San Francisco Bay Area Water Transit Authority; Mr. Basil Maher, President and Chief Operating Officer, Maher Terminals; Mr. Charles Raymond, Chairman, President, and CEO, Horizon Lines; Ms. Alice K. Johnson, Senior Supervisor, PPG Industries, Inc.; Mr. Timothy J. Scott, Global Director, Emergency Services, & Security, The Dow Chemical Company; Mr. Mark Witten, Sr. Regulatory Advisor, Gulf of Mexico Deepwater Business Unit, ChevronTexaco; Mr. Robert R. Merhige, III, Deputy Executive Dir., Virginia Port Authority (retired); Captain Jeffery Wayne Monroe, Director of Ports and Transportation, Portland, Maine; Ms. Lisa Himber, Vice President Maritime Exchange for the Delaware River and Bay; Mr. Wade M. Battles, Managing Director, Port of Houston Authority; Mr. John Hyde, Director, Security & Compliance, Maersk Sealand Inc.; Mr. William Eglinton, Director of Training, Seafarers International Union (SIU) of North America, AFL CIO; Mr. James Stolpinski, President, Local 920, International Longshoremen's Association; Mr. David Halstead, Chief, Florida Domestic Security Preparedness, Florida Department of Law Enforcement; Mr. Theodore Louis Mar, Chief, Marine Safety Branch, California Department of Fish and Game; Dr. Victor Zaloom, Professor and Chair of Industrial Engineering and Director, Engineering Graduate Programs and Center for Ports and Waterways, Lamar University.

Dated: February 4, 2005.

F. J. Sturm,

Captain, U.S. Coast Guard, Chief, Office of Port and Vessel and Facility Security.

[FR Doc. 05–2754 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–PO]

Notice To Close 2235 Acres of Public Land To Discharge of Firearms at the Glendive Short Pine OHV Area

AGENCY: Bureau of Land Management, Interior, Montana, Miles City Field Office.

ACTION: Notice to close 2235 acres of public land administered by the Bureau of Land Management in Dawson County, Montana to the discharge of firearms.

SUMMARY: Notice is hereby given that 2235 acres of public land is closed to the discharge of firearms for public safety concerns. The closed property is within the Glendive Short Pine OHV Management Area, which is located six

and a half miles south of the town of Glendive, Montana by way of highway #335, commonly known as the Marsh Road. The specific land identified for closure includes:

T.14 N., R.55 E., P.M.M.,
sec 3: all: except E½SW¼ NE¼SW¼, SE¼NE¼ SW¼—west of highway #335;
sec 10: all;
sec 15: all;
sec 21: E½.

Closure signs will be posted at the major entry points and on a kiosk located in the parking area. Maps and closure information will be available from the Miles City Field Office.

DATES: This closure will commence immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David McIlnay, Field Manager, BLM, Miles City Field Office, 111 Garryowen Rd., Miles City, Mt. 59301 or call 406–233–2827.

SUPPLEMENTARY INFORMATION: This closure is necessary for the management of actions, activities, and safe public use on certain Federal lands which may have, or is having, adverse impacts on persons using said property. This closure notice will be in effect immediately. Increasing levels of use are creating conflict situations between different user groups. The identified land is currently being used for hiking, collecting, horseback riding, wildlife observation, seasonal hunting, off road riding, and discharge of firearms. Hikers, horseback riders, OHV riders, and other casual users can schedule their activities around published hunting seasons for personal safety but they are not able to avoid casual discharge of firearms. Existing landscape characteristics include moderate timber cover and rough badlands terrain which seriously reduces visibility and hence increases the safety concerns of recreation users with respect to those who visit the area for the discharge of firearms. To reduce this potential safety hazard, 2235 acres of public land within the area known as the Glendive Short Pine OHV Management Area will be closed to discharge of firearms. This area will remain open and available to hunting by licensed sportsmen during seasons administered by the Montana Department of Fish, Wildlife and Parks.

This closure only applies to those lands specifically identified in the summary section.

Closure: 1.0 Closure of certain public lands to discharge of firearms.

The following is prohibited: Discharge of firearms.

2.0 Exceptions:

This rule making does not apply to the hunting of lawful game by licensed sportsmen during seasons administered by the Montana Department of Fish, Wildlife and Parks. This rule making also does not apply to a small area designated as open to discharge of firearms.

The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 9268.3(d)(1)(i) and 43 CFR 8364.1(a). Violations of this regulation are punishable by a fine in accordance with the Sentencing Reform Act of 1984 (18 U.S.C. 3551 *et seq.*) and/or imprisonment not to exceed 12 months for each offense.

Dated: February 4, 2005.

David McIlnay,

Field Manager, MCFO.

[FR Doc. 05–2745 Filed 2–11–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Land Management to meet certain administrative and management purposes. The lands we surveyed are:

The plat representing the entire record of the survey of the 2003–2004 meanders of Hog Island, in the Snake River, designated as Tract 37, in T. 10 S., R. 23 E., Boise Meridian, Idaho, was accepted February 2, 2005.

Dated: February 8, 2005.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 05–2763 Filed 2–11–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 15, 2005. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 1, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Gila County

Pine Community Center Historic District, Bounded by Randall Dr., AZ 87/260, unnamed service Rd., and Pine Creek Dr. Pine, 05000068

CALIFORNIA

Alpine County

Webster Schoolhouse, Old, 135 School St., Markleeville, 05000071

Los Angeles County

Avenel Cooperative Housing Project, 2839–2849 Avenel St., Los Angeles, 05000070

San Diego County

Holzwasser—Walker Scoot Building and Owl Drug Building, 1014 Fifth ave. and 402–416 Broadway, San Diego, 05000072

Santa Clara County

Saratoga Foodhill Club, 20399 Park Place, Saratoga, 05000069

COLORADO

Grand County

East Inlet Trail, (Rocky Mountain National Park MPS) Rocky Mountain National Park, Estes Park, 05000073

Larimer County

Fern Lake Trail, (Rocky Mountain National Park MPS) Rocky Mountain National Park, Estes Park, 05000074

GEORGIA

Bibb County

Holt, Walter R., House, 3776 Vineville Ave., Macon, 05000076

Coweta County

Sargent Historic District, Roughly centered on the Arnall Mill Complex at the jct. of GA 16 and Old Carrolton Rd., Sargent, 05000077

Rabun County

Kilby, James Henry and Rachel, House, 28 Tumbling Waters Ln., Clayton, 05000078

Troup County

West Point Freight Depot, 305 W. 5th St., West Point, 05000075

MASSACHUSETTS

Barnstable County

Kelley, Mercelia Evelyn Eldredge, House, 2610 Main St., Chatham, 05000080

MASSACHUSETTS

Essex County

Lynn Memorial City Hall and Auditorium, 3 City Hall Square, Lynn, 05000082

Hampshire County

West Hatfield Historic District, 3–12 Church Ave., 2 Linseed Rd., 23–42 West St., Hatfield, 05000079

Plymouth County

Camp Kiwanee Historic District, 1 Camp Kiwanee Rd., Hanson, 05000081

MISSOURI

Jackson County

Harry S Truman National Historic Site (Boundary Increase), 601 and 605 W. Truman Rd. and 216 N. Delaware St., Independence, 05000083

St. Louis County

Norwood Hills Country Club, 1 Norwood Hills Country Club Dr., Ferguson, 05000084

NEW YORK

Nassau County

Felix, Pauline, House, 151 W. Penn St., Long Beach, 05000090
Schenck—Mann House, 222 Convent Rd., Syosset, 05000089

New York County

Look Building, 488 Madison Ave., New York, 05000087
Seville Hotel, 22 East 29th St., New York, 05000088
Williams, R.C., Warehouse, 259–273 Tenth Ave., New York, 05000086

Suffolk County

Prince, Henry W., Building, 54325 Main Rd., Southold, 05000091

NORTH CAROLINA

Randolph County

Lewis—Thornburg Farm, NC 1107, approx 1.5 mi. S of jct. with NC 1170, Asheboro, 05000085

OHIO

Cuyahoga County

South Brooklyn Commercial District, Roughly along Pearl and Broadview Rds., Cleveland, 05000092

Hamilton County

Eastwood Historic District, Roughly along Eastwood, Collinwood, Overbrook, Madison and Duck Creek Rds. Cincinnati, 05000093

OREGON

Multnomah County
Boschke—Boyd House, 2211 NE Thompson St., Portland, 05000094
McDougall—Campbell House, 3846 N.W. Thurman St., Portland, 05000095

PENNSYLVANIA

Bedford County

Coffee Pot, The, Business Rte 30, Bedford Township, 05000097

Bucks County

Eakin, John, Farm, 3298 PA 212, Main St., Springtown, Sprinfield Township, 05000100

Chester County

West Chester Historic District (Boundary Increase), Roughly bounded by West Chester's northern boundary, Poplar St., East Rosedale Ave., and South Bradford Ave., West Chester, 05000096

Elk County

Swedish Lutheran Parsonage, 230 Kane Street Wilcox, Jones Township, 05000099

Lancaster County

Woodward Hill Cemetery, Bounded by Strawberry St., S. Queen St., and Chesapeake St., Lancaster, 05000098

Wyoming County

Tunkhannock Historic District, Roughly bounded by Tioga, Pine, Harrison Sts., and Wyoming Ave., Tunkhannock, 05000101

WISCONSIN

Oneida County

McCord Village (Boundary Increase), Address Restricted, Lynne, 05000102

[FR Doc. 05–2741 Filed 2–11–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 22, 2005. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 1, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ILLINOIS

Cook County

Chicago Club, 81 East Van Buren St., Chicago, 05000109
Garden Homes Historic District, Roughly bounded by S. Wabash Ave., E. 87th St., S. Indiana Ave. and E. 89th St., Chicago, 05000108
Glasner, William A., House, 850 Sheridan Rd., Glencoe, 05000105
Humphrey, John, House, 9830 W. 144th Place, Orland Park, 05000114
Narragansett, The, 1640 E. Fiftieth St., Chicago, 05000107
Oakton Historic District, Roughly bounded by Oakton St., Howard St., Ridge Ave., and Asbury Ave., Evanston, 05000106

Greene County

Black Homestead Farm, RR 3, Carrollton, 05000110

Jo Daviess County

Townsend House, 117 N. Canyon Park Rd., Stockton, 05000111

Winnebago County

Rockford Elk's Lodge #64, 210 W. Jefferson, Rockford, 05000113

MICHIGAN

Ontonagon County

Bergland Administrative Site, M–28, Bergland, 05000103

MISSOURI

St. Louis Independent City

Gravois—Jefferson Streetcar Suburb Historic District (South St. Louis Historic Working and Middle Class Streetcar Suburbs MPS), Grovois and S. Jefferson, S. Jefferson and S. Broadway, Meramac, S. Gran and Gravois, St. Louis (Independent City), 05000115

WISCONSIN

Milwaukee County

Prospect Hill Historic District, 2700 blk. of N. Hackett Ave., N. Shepard Ave., N. Summit Ave. and 2804–06 E. Park Place, Milwaukee, 05000104

[FR Doc. 05–2742 Filed 2–11–05; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–529]

Certain Digital Processors, Digital Processing Systems, Components Thereof, and Products Containing Same

AGENCY: United States International Trade Commission.

ACTION: Correction notice for the subject investigation.

SUMMARY: On January 6, 2005, the Commission published in the **Federal Register** (70 FR 1277) a notice of investigation of certain digital processors, digital processing systems, components thereof, and products containing same under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). The Commission gives notice of the following needed corrections to the above mentioned notice: (1) In the section labeled **SUMMARY**, U.S. Patent No. ''4,487,755'' should read ''4,847,755,'' and U.S. Patent No. ''5,021,954'' should read ''5,021,945;'' and (2) in the section labeled **Scope of Investigation**, U.S. Patent No. ''4,487,755'' should read ''4,847,755,'' and U.S. Patent No. ''5,021,954'' should read ''5,021,945.''

EFFECTIVE DATE: January 6, 2005.

FOR FURTHER INFORMATION CONTACT: Benjamin D. M. Wood, Esq. (202–205–2582), U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Issued: February 9, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–2805 Filed 2–11–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 001–2005]

Privacy Act of 1974; Systems of Records

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of Justice, Federal Bureau of Investigation (FBI), is modifying the following systems of records:

Bureau Mailing Lists, Justice/FBI–003 (previously published on June 22, 2001 at 66 FR 33560);

Electronic Surveillance (ELSUR) Indices, Justice/FBI–006 (previously published on June 22, 2001 at 66 FR 33560);

Security Access Control System (SACS), Justice/FBI–013 (previously published on October 3, 1993 at 58 FR 51877); and

Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU (previously published on June 22, 2001 at 66 FR 33558).

Opportunity for Comment: The Privacy Act (5 U.S.C. 552a(e)(4) and (11)) requires that the public be given 30 days in which to comment on any new or amended uses of information in a system of records. In addition, in accordance with Privacy Act requirements (5 U.S.C. 552a(r)), the Department of Justice has provided a report on these modifications to OMB and the Congress. OMB, which has oversight responsibilities under the Act, requires that OMB and the Congress be given 40 days in which to review major changes to Privacy Act systems. Therefore, the public, OMB, and the Congress are invited to submit written comments on this modification.

Address Comments or Requests for Further Information to: Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place, Washington, DC 20530.

DATES: These proposed changes will be effective March 28, 2005, unless comments are received that result in a contrary determination.

SUPPLEMENTARY INFORMATION: The FBI is modifying the Bureau Mailing Lists, ELSUR, and SACS system of records notices and the BRU notice to clarify and update them. The Bureau Mailing Lists system notice is being modified to clarify the categories of individuals covered by the system and the categories of records in the system.

The SACS notice is being modified to expand the system location, to clarify the categories of individuals covered by the system and the categories of records in the system, to explain the routine uses that apply to this system, and to revise the policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system.

The FBI has also made minor amendments to correct typographical errors in both notices. Additionally, further explanation in the ''Purpose'' section has also been made to both notices.

The ELSUR system notice is being revised to expand the categories of individuals covered by the system to include the names of the judge and the prosecuting attorney in the application and the Department of Justice official who reviewed the affidavit and approved the filing of the application with the court.

The BRU notice is being revised to add five routine uses which, like the other blanket routine uses, will apply to all systems of records (with the exception of the National DNA Index System and the National Instant Criminal Background Check System). These routine uses permit disclosures to the White House and to complainants/victims, and disclosures involving hiring, clearances, or licensing, and have been published by the Department of Justice for some of its other systems.

The Bureau Mailing Lists, SACS and ELSUR systems are being republished to reflect these changes. A description of the modification to the three systems of records is attached.

Dated: February 4, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/FBI–003

SYSTEM NAME:

Bureau Mailing Lists.

SYSTEM LOCATION:

Records may be maintained at all locations at which the Federal Bureau of Investigation (FBI) operates, including: J. Edgar Hoover FBI Bldg., 935 Pennsylvania Ave., NW., Washington, DC 20535; FBI Academy and FBI Laboratory, Quantico, VA 22135; FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Rd., Clarksburg, WV 26306; and FBI field offices, legal attaches, and information technology centers as listed on the FBI's Internet Web site, *http://www.fbi.gov*,

including any future revisions to the Web site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons appearing on manual or electronic rolodexes, e-mail address groups, electronic merge files, address books, or other mailing lists maintained in any medium throughout the FBI to facilitate mailings, electronic disseminations, or other communications to one or more recipients in furtherance of FBI activities. These include persons who have requested Bureau material, persons who are routinely forwarded unsolicited Bureau material and who meet established criteria (generally law enforcement or closely related interests), and persons who may be in a position to furnish assistance in furtherance of the FBI's mission. These do not include persons on mailing lists not encompassed within this system as described in the section titled ''Categories of Records in the System.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include names, addresses, telephone numbers, e-mail or internet addresses, business affiliation, and supplemental information related to addressees and relevant to a list's purpose. These do not, however, include mailing lists which have been incorporated into some other FBI records system, such as a mailing list supporting a particular investigation maintained as an investigative record within the FBI's Central Records System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, section 301; title 44, United States Code, section 3101; title 28, United States Code, section 533; and title 28, Code of Federal Regulations, section 0.85.

PURPOSE(S):

System records are used for disseminating FBI material to one or more addressees, via hard copy, e-mail, or other means of distribution, in furtherance of FBI activities. For example, various fugitive alerts are furnished to local law enforcement agencies, investigation periodicals are provided to law enforcement professionals, and information on local law enforcement issues may be provided to community leaders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FBI may disclose relevant system records in accordance with any current or future blanket routine uses established for FBI records systems. See Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU, published on June 22, 2001 at 66 Fed. Reg. 33558 and amended in today's **Federal Register** (and any future revisions).

In addition, as a routine use specific to this system, the FBI may disclose relevant system records to the following persons or entities under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected. (Routine uses are not meant to be mutually exclusive and may overlap in some cases.)

To a federal, state, local, joint, tribal, foreign, international, or other public agency/organization, where such disclosure serves law enforcement interests. By way of example and not limitation, such disclosures may for instance include: Sharing names of law enforcement professionals receiving FBI periodicals with law enforcement agencies interested in reaching a similar audience; sharing information of intelligence value with other law enforcement or intelligence agencies to whose lawful responsibilities the information may be germane; or sharing information pertinent to victim/witness assistance with local government entities in furtherance of such assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most information is maintained in computerized form and stored in memory, on disk storage, on computer tape, or other computer media. However, some information may also be maintained in hard copy (paper) or other form.

RETRIEVABILITY:

Information typically will be retrieved by an ID number assigned by computer or by name of person or organization.

SAFEGUARDS:

System records are maintained in limited access space in FBI facilities and offices. Computerized data is password protected. All FBI personnel are required to pass an extensive background investigation. The information is accessed only by authorized DOJ personnel or by non-DOJ personnel properly authorized to assist in the conduct of an agency function related to these records.

RETENTION AND DISPOSAL:

FBI offices revise the lists as necessary. The records are destroyed, under authority granted by the National Archives and Records Administration, when administrative needs are satisfied.

SYSTEM MANAGER(S) AND ADDRESS:

Director, FBI, 935 Pennsylvania Ave., NW., Washington, DC 20535–0001.

NOTIFICATION PROCEDURES:

Same as Record Access Procedures.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked ''Privacy Act Request''. Include in the request your full name and complete address. The requester must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may submit any other identifying data you wish to furnish to assist in making a proper search of the system. Requests for access to information maintained at FBI Headquarters must be addressed to the Record/Information Dissemination Section, Federal Bureau of Investigation, 935 Pennsylvania Ave., NW., Washington, DC 20535–0001. Requests for information maintained at FBI field offices, legal attaches, information technology centers, or other locations must be made separately and addressed to the specific field office, legal attache, information technology center, or other location as listed on the FBI's Internet Web site, *http://www.fbi.gov*, including any future revisions to the Web site.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the appropriate FBI office, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The mailing list information is based on information supplied by affected individuals/organizations, public source data, and/or information already in other FBI records systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/FBI–006

SYSTEM NAME:

Electronic Surveillance (ELSUR) Indices.

SYSTEM LOCATION:

Records may be maintained at all locations at which the Federal Bureau of Investigation (FBI) operates, including: J. Edgar Hoover FBI Bldg., 935 Pennsylvania Ave., NW., Washington, DC 20535; FBI Academy and FBI Laboratory, Quantico, VA 22135; FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Rd., Clarksburg, WV 26306; FBI field offices, legal attaches, and information technology centers as listed on the FBI's Internet Web site, *http://www.fbi.gov*, including any future revisions to the Web site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who have been the targets of electronic surveillance coverage sought, conducted, or administered by the FBI pursuant to a court order, consensual monitoring, or other authority; those who have been a party to a communication or present in a locale monitored/recorded electronically pursuant to such electronic surveillance; those who own, lease, license, hold a possessory interest in, or commonly use the property or location subjected to such electronic surveillance; and those involved in the administration of the electronic surveillance, for example, the judge issuing or denying an order for an electronic surveillance application, the prosecuting attorney, and the officials who authorized the filing of the application.

CATEGORIES OF RECORDS IN THE SYSTEM:

The ELSUR Indices are comprised of four types of records:

1. Principal records identify, by true name or best known name, all persons, entities, and facilities who have been the targets of electronic surveillance coverage sought, conducted, or administered by the FBI pursuant to a court order or other authority. These records include, but are not limited to, persons, entities, and facilities named in an application filed in support of an affidavit seeking a court order to conduct or administer an electronic surveillance. Principal records may also include descriptive data associated with the name appearing on the record.

2. Proprietary-interest records identify entities and/or individuals who own, lease, license, hold a possessory interest in, or commonly use the property or location subjected to an electronic surveillance. Proprietary interest records may identify individuals involved in the administration of the electronic surveillance; for example, the judge issuing or denying an order for an electronic surveillance application, the prosecuting attorney, the officials who authorized the filing of the application. Proprietary-interest records may also include descriptive data associated with the name appearing on the record.

3. Intercept records identify, by true name or best known name, individuals who have been reasonably identified by a first name or initial and a last name as being a party to a communication monitored/recorded electronically pursuant to an electronic surveillance. Intercept records also identify entities that have been a party to a communication or present in a locale monitored/recorded electronically pursuant to an electronic surveillance. Intercept records may include descriptive data associated with the name appearing on the record.

4. Reference records identify, by partial name, such as a first name only, last name only, code name, nickname, or alias those individuals who have been a party to a communication or present in a locale monitored/recorded electronically pursuant to an electronic surveillance, and may include descriptive data associated with the individual. If the individual is later identified by a more complete name, *e.g.*, through further monitoring or normal investigative procedures, the reference record is re-entered as an intercept record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The ELSUR Indices were initiated in October, 1966, at the recommendation of the Department of Justice and relate to electronic surveillance sought, administered, and/or conducted by the FBI since January 1, 1960. The authority for the maintenance of these records is title 5, United States Code, section 301; title 44, United States Code, section 3101; title 18, United States Code, section 2510, *et seq.*; title 18, United States Code, section 3504; title 28, United States Code, section 533; title 50, United States Code 1801, *et seq.*; and title 28, Code of Federal Regulations, section 0.85.

PURPOSE(S):

These records are used by the FBI to maintain certain information regarding electronic surveillance sought, conducted or administered by the FBI in order to permit the agency to respond to judicial inquiries about possible electronic surveillance coverage of any individual or entity, and to enable the Government to certify, as requested by federal, state or local law enforcement agencies, whether or not an individual, entity, facility, or place on whom a court ordered authority is being sought for electronic surveillance coverage has ever been subjected to electronic surveillance coverage in the past.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FBI may disclose relevant system records in accordance with any current and future blanket routine uses established for FBI records systems. See Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU, published on June 22, 2001 at 66 FR 33558 and amended in today's **Federal Register** (and any future revisions).

In addition, as routine uses specific to this system, the FBI may disclose relevant system records to the following persons or entities under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected. (Routine uses are not meant to be mutually exclusive and may overlap in some cases.)

A. To the judiciary in response to inquiries about possible electronic surveillance coverage of any individual or entity.

B. To federal, state, local and tribal law enforcement officers to enable the government to certify whether or not an individual, entity, facility, or place on whom a court ordered authority is being sought for electronic surveillance coverage has ever been subjected to electronic surveillance coverage in the past.

C. To a federal, state, local, joint, tribal, foreign, international, or other public agency/organization, where such disclosure serves a law enforcement purpose, such as sharing information of intelligence value with other law enforcement or intelligence agencies to whose lawful responsibilities the information may be germane.

D. To any person or entity in either the public or private sector, domestic or foreign, if deemed by the FBI to be reasonably necessary in eliciting information or cooperation from the recipient for use by the FBI in the performance of an authorized function, *e.g.*, disclosure of personal information to a member of the public in order to elicit his/her assistance/cooperation in a criminal, security, or employment background investigation.

E. To any person or entity in either the public or private sector, domestic or foreign, where there is reason to believe that a person or entity could become the target of a particular criminal activity or conspiracy, to the extent the disclosure

of information is deemed by the FBI to be reasonable and relevant to the protection of life, health, or property of such target.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The majority of the records are maintained in an automated data base. Some records are maintained in hard-copy (paper) format or other form.

RETRIEVABILITY:

Information typically will be retrieved by the name of the individual or entity. Telephone numbers and other such serial or identification numbers are retrievable numerically. Locations targeted are retrievable by street name.

SAFEGUARDS:

System records are maintained in limited access space in FBI facilities and offices. Computerized data is password protected. All FBI personnel are required to pass an extensive background investigation. The information is accessed only by authorized DOJ personnel or by non-DOJ personnel properly authorized to assist in the conduct of an agency function related to these records.

RETENTION AND DISPOSAL:

A reference record is purged if the individual is later identified by a more complete name and converted to an intercept record. Remaining reference records are purged from the system as follows. Those relating to court ordered electronic surveillance are purged six months from the date the corresponding authorization for the surveillance expires. Reference records relating to consensual intercepts are purged one year from the last intercept date shown on the record. Until advised to the contrary by the Department of Justice, the courts, or applicable legislation, all other indices records will be maintained indefinitely and have been declared permanent by the National Archives and Records Administration (NARA) (Job No. NC1–65–82–4, Part E, item 2(t)).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as Record Access Procedures.

RECORD ACCESS PROCEDURES:

A request for notification as to whether a record about an individual exists in the system and/or for access to a record from the system shall be made in writing with the envelope and the letter clearly marked ''Privacy Act Request.'' Include in the request your full name and complete address. The requester must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may submit any other identifying data you wish to furnish to assist in making a proper search of the system. Requests for access to information maintained at FBI Headquarters must be addressed to the Record/Information Dissemination Section, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001. Requests for information maintained at FBI field offices, information technology centers, or other locations must be made separately and addressed to the specific field office, information technology center, or other location as listed on the FBI's Internet Web site, *http://www.fbi.gov,* including any future revisions to the Web site.

Some information may be exempt from notification and/or access procedures as described in the section titled ''Exemptions Claimed for the System.'' An individual who is the subject of one or more records in this system may be notified of records that are not exempt from notification and may access those records that are not exempt from disclosure. A determination on notification and access will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

If you desire to contest or amend information maintained in the system, you should also direct your request to the appropriate FBI office, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

Some information may be exempt from contesting record procedures as described in the section titled ''Exemptions Claimed for the System.'' An individual who is the subject of one or more records in this system may contest and pursue amendment of those records that are not exempt. A determination whether a record may be subject to amendment will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Information in the indices is derived from electronic surveillance, public source information, and other FBI record systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and(H), (e)(5) and (8), (f), (g) and (m) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e), have been published in the **Federal Register**, and are codified at 28 CFR 16.96(c) and (d).

JUSTICE/FBI–013

SYSTEM NAME:

Security Access Control System (SACS).

SYSTEM LOCATION:

Records may be located at all locations at which the Federal Bureau of Investigation (FBI) operates, including: J. Edgar Hoover FBI Building, 935 Pennsylvania Ave., NW., Washington, DC 20535; FBI Academy and FBI Laboratory, Quantico, VA 22135; FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Rd., Clarksburg, WV 26306; FBI field offices, legal attaches, and information technology centers as listed on the FBI's Internet Web site, *http://www.fbi.gov,* including any future revisions to the Web site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have applied for, sought, been considered for, attempted and/or obtained access to the J. Edgar Hoover FBI Building, FBI field offices, CJIS West Virginia Complex, FBI Academy, FBI Laboratory, legal attaches, information technology centers or other locations where the FBI operates, or to FBI vehicles, property or equipment, including: current and former FBI employees, contractors, vendors, grantees, experts, consultants, task force personnel, volunteers, detailees, visitors, and other non-FBI employees. May also include persons identified as employers, sponsors, references, or contacts for the above individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include: names; social security numbers; dates of birth; physical descriptions; badge numbers; information on employer, sponsor, contacts, and/or references; home and/or business addresses and phone numbers; dates and times of entry, exit, and/or passage through control points; fingerprints, photographs, videos, electronic images, signatures, and other biometric identifiers; vehicle identification data; purpose of visit and

person visited and/or other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12958, as amended 13292, Title 5 U.S.C. 552a(e)(10); title 44 U.S.C. chapters 21 and 33. These statutes, as well as the Executive Orders, are directed toward security of United States Government records maintained by federal agencies. Title 40 U.S.C. chapter 318a; and Title 41 CFR 102–81.10 and 81.15. This statute and the federal regulations are directed toward security of United States Government buildings and the people therein.

PURPOSE(S):

System records are necessary to maintain the security of the personnel and locations at which the FBI operates, and of FBI records, vehicles, property and equipment, and are used to determine eligibility and/or the status of individuals who have applied for, sought, been considered for, attempted and/or obtained such access. System records are also used to maintain control of badges issued for access to locations where the FBI operates and to Bureau vehicles, property or equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FBI may disclose relevant system records in accordance with any current or future blanket routine uses established for FBI records systems. See Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU, published on June 22, 2001 at 66 FR 33558 and amended in today's **Federal Register** (and any future revisions).

In addition, as routine uses specific to this system, the FBI may disclose relevant system records to the following persons or entities under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected. (Routine uses are not meant to be mutually exclusive and may overlap in some cases.)

A. To a federal, state, local, joint, tribal, foreign, international, or other public agency/organization, where such disclosure serves a law enforcement purpose, such as sharing information of intelligence value with other law enforcement or intelligence agencies to whose lawful responsibilities the information may be germane.

B. To any person or entity in either the public or private sector, domestic or foreign, if deemed by the FBI to be reasonably necessary in eliciting information or cooperation from the recipient for use by the FBI in furthering the purposes of the system, *e.g.*, disclosure of personal identifying information to an associate or employer of a person to confirm the person's identity, suitability, and reason for access to an FBI facility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most information is maintained in computerized form and stored in memory, on disk storage, on computer tape, or other computer media. However, some information may also be maintained in hard copy (paper) or other form.

RETRIEVABILITY:

Information is typically retrieved by name of the individual, other personal identifiers, or by access badge number.

SAFEGUARDS:

System records are maintained in limited access space in FBI controlled facilities and offices. Computerized data is password protected. All FBI personnel are required to pass an extensive background investigation. The information is accessed only by authorized DOJ personnel or by non-DOJ personnel properly authorized to assist in the conduct of an agency function related to these records.

RETENTION AND DISPOSAL:

System records in all formats are maintained and disposed of in accordance with appropriate authority of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, FBI, 935 Pennsylvania Ave., NW., Washington, DC 20535–0001.

NOTIFICATION PROCEDURES:

Same as Record Access Procedures.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked ''Privacy Act Request''. Include in the request your full name and complete address. The requester must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may submit any other identifying data you wish to furnish to assist in making a proper search of the system. Requests for access to information maintained at FBI Headquarters must be addressed to the Record/Information Dissemination Section, Federal Bureau of Investigation, 935 Pennsylvania Ave., NW., Washington, DC 20535–0001. Requests for information maintained at other FBI locations must be made separately and addressed to the specific location as listed on the FBI's Internet Web site, *http://www.fbi.gov,* including any future revisions to the Web site.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the appropriate FBI location, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

See Categories of Individuals Covered by The System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/FBI–BRU

SUBJECT:

Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records.

ACTION:

The system notice published in the **Federal Register** on June 22, 2001 (66 FR 22559), is amended as follows:

In the section titled ''Routine Uses of Records Maintained in FBI Systems, Including Categories of Users and the Purposes of Such Uses,'' the section is amended by making minor corrections to BRU–2 and BRU–8, and by adding BRU–11, BRU–12, BRU–13, BRU–14, and BRU–15 directly after the description of BRU–10, so that the section reads as follows:

ROUTINE USES OF RECORDS MAINTAINED IN FBI SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

BRU–2. Non-FBI Employees. To contractors, grantees, experts, consultants, students, or others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function.

* * * * *

BRU–8. National Archives and Records Administration (NARA) Records Management. To the National Archives and Records Administration (NARA) for records management inspections and such other purposes

conducted under the authority of 44 U.S.C. 2904 and 2906.

* * * * *

BRU–11. The White House. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)), and, during Presidential transitions, the President-Elect and Vice-President Elect and their designees for appointment, employment, security, and access purposes compatible with the purposes for which the records were collected by the FBI, *e.g.*, disclosure of information to assist the White House in making a determination whether an individual should be: (1) granted, denied, or permitted to continue in employment on the White House Staff; (2) given a Presidential appointment or Presidential recognition; (3) provided access, or continued access, to classified or sensitive information; or (4) permitted access, or continued access, to personnel or facilities of the White House/EOP complex. System records may be disclosed also to the White House and, during Presidential transitions, to the President Elect and Vice-President Elect and their designees, for Executive Branch coordination of activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President, President Elect, Vice-President or Vice-President Elect.

BRU–12. Complainants and Victims. To complainants and/or victims to the extent deemed appropriate by the FBI to provide such persons with information and explanations concerning the progress and/or results of the investigations or cases arising from the matters of which they complained and/or of which they were victims.

BRU–13. To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

BRU–14. To federal, state, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

BRU–15. To designated officers and employees of state, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

[FR Doc. 05–2777 Filed 2–11–05; 8:45 am]
BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review, Import/Export Declaration: Precursor and Essential Chemicals—DEA Form 486.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 69, number 213, page 64322 on November 4, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 16, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Import/Export Declaration: Precursor and Essential Chemicals—DEA Form 486.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number:* DEA Form 486. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. *Abstract:* The Chemical Diversion and Trafficking Act of 1988 requires those persons who import/export certain chemicals to notify DEA 15 days prior to shipment. The information will be used to prevent shipments not intended for legitimate purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* DEA Form 486: The estimated total number of respondents is 333. DEA estimates that 223 persons will submit the DEA Form 486 as needed to report imports and exports of listed chemicals within approximately 12 minutes to complete DEA Form 486. DEA estimates that 110 persons will submit quarterly reports regarding imports of acetone, 2-Butanone, and toluene, within approximately 30 minutes to complete each quarterly report.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,500 burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department

Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 8, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–2760 Filed 2–11–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB Review: Comment Request

February 3, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Certification of Funeral Expenses.

OMB Number: 1215–0027.

Form Number: LS–265.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business and other for-profit.

Number of Respondents: 195.

Annual Reponses: 195.

Average Response Time: 15 minutes.

Total Annual Burden Hours: 49.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $78.00.

Description: The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. The Act provides that reasonable funeral expenses not to exceed $3,000 shall be paid in all compensable death cases. The LS–265 has been provided for use in submitting the funeral expenses for payment.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: (1) Comparability of Current Work to Coal Mine Employment; (2) Coal Mine Employment Affidavit; (3) Affidavit of Deceased Miner's Condition.

OMB Number: 1215–0056.

Form Numbers: CM–913; CM–918; and CM–1093.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Individuals or households.

Number of Respondents: 1,500.

Form	Annual responses	Average response time (hours)	Annual burden hours
CM–913	1,350	0.50	675
CM–918	75	0.17	13
CM–1093	75	0.33	25
Total	1,500	.....	713

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $600.00.

Description: The Black Lung Benefits Act of 1977, as amended, 30 U.S.C. 901 *et seq.*, provides for the payment of benefits to coal miners who have contracted black lung disease as a result of coal mine employment, and their dependents and survivors. Once a miner has been identified as having performed non-coal mine work subsequent to coal mine employment, the miner or the miner's survivor is asked to complete a CM–913 to compare coal mine work to non-coal mine work. This employment information along with medical information is used to establish whether the miner is totally disabled due to black lung disease caused by coal mine employment. The CM–918 is an affidavit used to gather coal mine employment evidence only when primary evidence, such as pay stubs, W–2 forms, employer and union records, and Social Security records are unavailable or incomplete. The CM–1093 is an affidavit form for recording lay medical evidence, used in survivors' claims in which there is no medical evidence that addresses the miner's pulmonary or respiratory condition.

Agency: Employment Standards Administration.

Type of Review: Revision of currently approved collection.

Title: Roentgenographic Interpretation (CM–933); Roentgenographic Quality Rereading (CM–933b); Medical History and Examination for Coal Mine Workers' Pneumoconiosis (CM–988); Report of Arterial Blood Gas Study (CM–1159); and Report of Ventilatory Study (CM–2907).

OMB Number: 1215–0090.

Form Numbers: CM–933; CM–933b; CM–988; CM–1159; and CM–2907.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business and other for-profit and Not-for-profit institutions.

Number of Respondents: 17,500.

Form	Number of annual responses	Average response time (hours)	Annual burden hours
CM–933	3,500	0.08	292
CM–933b	3,500	0.05	175
CM–988	3,500	0.50	1,750
CM–1159	3,500	0.25	875
CM–2907	3,500	0.33	1,167
Total:	17,500		4,259

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Black Lung Act Benefits Act of 1977 as amended, 30 U.S.C. 901 *et seq*. and 20 CFR 718.102 set forth criteria for the administration and interpretation of x-rays. When a miner applies for benefits, the Division of Coal Mine Workers' Compensation is required to schedule a series of four diagnostic tests to help establish eligibility for black lung benefits. Each of the diagnostic tests has its own form that sets forth the medical results. The forms are: CM–933, Roentgenographic Interpretation; CM–933b, Roentgenographic Quality Rereading; CM–988, Medical History and Examination for Coal Mine Workers' Pneumoconiosis; CM–1159, Report of Arterial Blood Gas Study; and CM–2907, Report of Ventilatory Study.

The Department of Labor seeks the approval of this information in order to carry out its responsibility to determine eligibility for black lung benefits.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–2789 Filed 2–11–05; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–024)]

National Environmental Policy Act; Environmental Assessment and Finding of No Significant Impact; NASA Shared Services Center (NSSC)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of Draft Environmental Assessment and Draft Finding of No Significant Impact.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, and NASA's implementing regulations, the National Historic Preservation Act, as amended, NASA regulations for implementing Executive Order (EO) 11988, Floodplain Management, and EO 11990, Protection of Wetlands, and the NASA Environmental Justice Strategy (1994) for implementing EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; NASA has made a Finding of No Significant Impact (FONSI) for the three proposed alternatives including: the Proposed and Preferred Action (Alternative A, lease and operation of the NASA Shared Services Center (NSSC) at any of the following three sites: NASA Stennis Space Center, Mississippi, Aerospace Technology Park, Brook Park, Ohio, and Cummings Research Park, Huntsville, Alabama); Alternative B (Virtual Consolidation); and Alternative C (No Action). Accordingly, an environmental impact statement is not required.

DATES: Comments in response to this notice must be received in writing by NASA, no later than March 16, 2005, or March 17, 2005, whichever is later.

ADDRESSES: Comments should be addressed to:

Dr. Ann H. Clarke, NASA Environmental Program Manager, Environmental Management Division (Code LD020), NASA Headquarters, 300 E Street, SW., Washington DC 20546–0001; phone: 202–358–0007; e-mail: *ann.h.clarke@nasa.gov*

The Environmental Assessment (EA Phase 2) for the NSSC Facility that supports this FONSI may be reviewed on the NSSC Web site *http://nssc.nasa.gov,* or at the NASA Headquarters Library, 300 E Street, SW., Washington, DC 20546.

A limited number of copies of the EA are available by contacting Dr. Ann H. Clarke, NASA Environmental Program Manager, Environmental Management Division (Code LD020), NASA Headquarters, 300 E Street, SW., Washington DC 20546–0001; phone: 202–358–0007; e-mail: *ann.h.clarke@nasa.gov* or the following NASA Center NEPA Document Managers:

NASA Glenn Research Center (GRC): Ms. Trudy F. Kortes, 216–433–3632.

NASA Marshall Space Flight Center (MSFC): Ms. Donna L. Holland, 256–544–7201.

NASA Stennis Space Center (SSC): Ms. Carolyn D. Kennedy, 228–688–1445.

SUPPLEMENTARY INFORMATION: NASA is proposing to consolidate certain transactional functions currently performed across NASA Centers to a new business unit known as the NASA Shared Services Center (NSSC) (*NASA Shared Services Center (NSSC) Implementation Plan Report* (NSSC–RPT–02 Volume 1, September 2003, recommending continued planning for early implementation of the NSSC) (*Implementation Plan*), available at *http://nssc.nasa.gov.*

The purpose of the Proposed Action (Alternative A), which is also the Preferred Alternative, is to locate the NSSC consistent with the recommendations of the Implementation Plan addressing the need for NASA to improve the use of resources and foster greater efficiencies at reduced costs for transactional functions. The Proposed Action would create a functionally and environmentally efficient NSSC to meet the need for a single shared-services facility, consistent with and furthering other goals for the NSSC. The Virtual NSSC (Alternative B) would consolidate the same functions into an NSSC, but in a virtual environment. The No Action NSSC (Alternative C) would allow continued administrative re-organization, but not into a consolidated NSSC.

Alternative A (Proposed Action and Preferred Alternative)

The Proposed Action (and Preferred Alternative) (Alternative A) would be to consolidate and co-locate certain currently dispersed transactional and administrative activities performed at NASA Centers in human resources, procurement, financial management, and information technology (IT) and identified in the NSSC **Implementation Plan**. IT functions consolidated to NASA Marshall Space Flight Center (MSFC) would remain at MSFC and be consolidated organizationally into the NSSC. Other types of functional activities or services may be consolidated into the NSSC in the future.

The NSSC would become operational on or about October 2005 and employ approximately 500 civil service employees and contractors at full transition after five years and may expand later by up to 40 percent. Most personnel currently performing the functional activities at existing Centers would remain at their respective Centers to concentrate on Center mission activities. Some personnel would leave due to normal attrition, while other personnel would be relocated to the NSSC. In addition to labor cost and availability, NASA siting criteria included workforce diversity, local transportation access, access by other NASA Centers, safe and healthful working conditions, opportunities for further employee development in the vicinity of the proposed NSSC, and opportunities for partnering with local educational institutions, including minority institutions.

The NSSC would require Class A office space in a facility comparable to a mid-size office building of approximately 12,150 square meters (m^2) (135,000 square feet (ft^2) with associated infrastructure, parking, and temporary swing space. No new computer ''data centers'' are planned. NASA would construct or lease the facility in partnership with State or local agencies or commercial partners. All proposals under Alternative A would include swing space in existing facilities during construction of the NSSC facility.

In addition to facility size, NASA required nominations to comply with NASA's sustainable design policy for new and renovated facilities (NASA Policy Directive (NPD) 8820.3, Facility Sustainable Design, NASA 2003, and NASA Memorandum on Policy for LEED(®) Leadership in Energy and Environmental Design Ratings for NASA New Facilities Projects, NASA Facilities Engineering Division, September 5, 2003). NASA also committed to designating a part or full-time NASA NSSC Environmental Manager and NASA NSSC Energy Manager and developing or applying an Environmental Management System (EMS) (NASA Procedural Requirements (NPR) 8553.1, NASA Environmental Management System, developed in response to EO 13148, Greening the Government Through Environmental Leadership), and would develop an Environmental Justice Strategy for the NSSC in response to NASA's Environmental Justice Strategy and EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Additional siting criteria included location of the NSSC in accordance with the priorities and procedures established in the Rural Development Act (RDA) of 1972, as amended (requiring Federal agencies to implement policies and procedures for giving first priority to rural areas); EO 12072, Federal Space Management (requiring Federal agencies to locate facilities according to listed criteria); EO 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities (directing Federal agencies to give priority to locating in historic properties and districts); other applicable Federal, State, Tribal, and local requirements; and the ability of local communities to provide adequate housing, schools, health care, recreational opportunities, and other amenities.

To demonstrate efficiencies not only in functional performance, but also in facility management supporting the NSSC, and to meet the timetable for implementing the NSSC, NASA's siting criteria included the ability to mitigate environmental impacts in the design and operation of the NSSC to below applicable significance levels.

NASA invited each NASA Center to nominate one proposed site according to NASA siting criteria. The proposed sites could be located on a NASA Center or off Center and use existing facilities or propose new construction.

Six sites were nominated, all involving new construction by the partner(s) and lease to NASA. No existing buildings, historic sites, or facilities within historic districts were identified that could meet the technical requirements for the NSSC. After review, NASA decided to retain all six site nominations for further consideration in the Phase 2 EA. As a result of the subsequent service provider procurement process, three of the six sites were incorporated by prospective service providers and retained by NASA for consideration as the decision-making process proceeds. The retained sites under Alternative A include NASA Stennis Space Center, Mississippi; Aerospace Technology Park, Brook Park, Ohio; and Cummings Research Park, Huntsville, Alabama.

Alternative B (Virtual Consolidation)

Under Alternative B, NASA would consolidate the functions into an NSSC in a virtual environment. Under this alternative, NASA would reorganize and relocate personnel and equipment and make minor upgrades or modifications to facilities and equipment.

Alternative C (No Action)

Under the No Action alternative (Alternative C), NASA would not consolidate functions into an NSSC but may continue to reorganize and relocate personnel and equipment and make minor upgrades or modifications to facilities and equipment in its on-going effort to improve administrative performance.

Summary of Environmental Assessment

Under NASA's NEPA implementing regulations, the administrative reorganization and facility selection and operation associated with implementing the proposed NSSC may qualify as a categorical exclusion (14 CFR 1216.305(d)(7) or (8)), *i.e.*, actions that may not require more detailed environmental analysis after review of any unique or extraordinary circumstances, public controversy on environmental grounds, and risks to public health and safety. However, because the proposed action may, depending on the circumstances, lead to proposals that would normally require more detailed environmental analysis, NASA initiated a phased environmental evaluation process, beginning with a Phase 1 EA, in accordance with section 102(2)(E) of NEPA and NASA implementing regulations. The Phase 1 EA was used internally as a resource in developing the site nomination guidelines to minimize the potential for environmental impacts, and all nominations were required to include a NASA Environmental Checklist and draft Record of Environmental Consideration (REC). The Phase 2 EA, incorporating by reference the Phase 1 EA, NASA Environmental Checklists, and draft REC's, has been prepared in accordance with the above regulatory requirements and NASA Procedural Requirements (NPR) 8580.1, Implementing the National Environmental Policy Act and Executive

Order 12114 (November 2001), and NASA Policy Directive (NPD) 8500.1A, NASA Environmental Management (April 2004), which require NASA to consider environmental factors throughout the lifecycle of an action, including planning, development, and operations.

Six NASA Centers proposed sites for the NSSC, all of which involve new construction by the partner(s) and lease to NASA. Alternatives A.1 and A.3, using existing facilities on a NASA Center and outside of a NASA Center, respectively, thus, were not carried forward for analysis in the site-specific Phase 2 EA. The Phase 1 EA, NASA Environmental Checklists, and draft RECs were incorporated by reference into the EA Phase 2. As a result of the procurement process in which prospective service providers had the flexibility of incorporating any one of the six sites into their respective proposals, NASA announced on January 7, 2005, as this draft EA was being completed, that three sites under Alternative A would be carried forward (A.2.2 (Stennis Space Center), A.4.1 (Aerospace Technology Park), and A.4.4 (Cummings Research Park)). These latter three alternative sites will remain under consideration (in italics); along with Alternatives B and C, as the decision-making process proceeds.

Alternative A: Consolidation and Co-Location of Functions at an NSSC

On an existing NASA Center, new construction required (Alternative A.2 in Phase 1 EA):

A.2.1 NASA Johnson Space Center (JSC) in Clear Lake, Texas.

A.2.2 NASA *Stennis Space Center (SSC) in Hancock County, Mississippi.*

Not on an existing NASA Center, new construction required (Alternative A.4 in Phase 1 EA):

A.4.1 *Aerospace Technology Park, City of Brook Park, Ohio, nominated by the Glenn Research Center (GRC).*

A.4.2 Central Florida Research Park (CFRP) in Orlando, Florida, nominated by the Kennedy Space Center (KSC).

A.4.3 City Center at Oyster Point, in Newport News Virginia, nominated by the Langley Research Center (LaRC).

A.4.4 Cummings Research Park (CRP) in Huntsville, Alabama, nominated by the Marshall Space Flight Center (MSFC).

Alternative B: Consolidation of Functions Into a Virtual NSSC

Alternative C: No Consolidation of Functions Into an NSSC (No Action Alternative)

The analysis and findings of the alternatives and planned mitigation considered in EA Phase 1 are incorporated by reference and summarized in this FONSI.

Findings

On the basis of the EA Phase 2, NASA has determined that the environmental impacts associated with this project under any of the proposed alternatives are negligible or can be easily prevented and mitigated, and no individual or cumulatively significant effect, either direct or indirect, on the quality of the environment would occur.

Alternative A (Proposed Action and Preferred Alternative)

Issues commonly associated with construction or modification and operation of a mid-size office building include air emissions from site clearing and construction; noise during construction and operation; impacts to cultural resources, stormwater drainage, wetlands, floodplains, and wildlife due to site clearing, excavation, and increased traffic and other human activity; aesthetic or other impacts to historic properties; and changes in local traffic patterns and levels.

NASA required all nominations to include a completed NASA Environmental Checklist and draft REC. For all new construction alternatives at existing Centers, NASA also reviewed environmental baseline information and other relevant information. For those alternatives requiring construction of new facilities off-Center, NASA reviewed information from Federal, State, and local planning and environmental agencies and other relevant sources. Table 1 summarizes the key findings and planned mitigation.

None of the alternatives (Alternatives A (A.2.2, NASA Stennis Space Center, A.4.1, Aerospace Technology Park, and A.4.4, Cummings Research Park), B, and C) would affect floodplains or the coastal zone. Under Alternative A, development of the NSSC at the Aerospace Technology Park site may require a wetlands permit, which is anticipated to result in wetlands mitigation off site comparable to mitigation required for the expansion of the adjacent Cleveland-Hopkins International Airport, but on a much smaller scale. All sites would comply with stormwater management plans and permits. The Cummings Research Park site would require a State-approved stormwater management plan.

No federally listed threatened or endangered species or critical habitat or other federally protected species would be affected under any Alternative. NASA would require pre-construction surveys for migratory birds and the Indiana bat at the Aerospace Technology Park site. If the presence of these species is indicated, NASA would consult with the U.S. Fish and Wildlife Service. Mitigation may include adjusting the construction schedule. At any of the sites, if threatened or endangered species or other protected species are discovered during construction, NASA would consult with the U.S. Fish and Wildlife Service in accordance with the applicable statutes and regulations.

Traffic and associated air quality impacts are expected to be minimal due to site locations near major arterials and the availability of traffic management options. NASA would require that precautions be taken to minimize dust and noise impacts at all sites.

Level 1 Site Assessments for contamination were completed at the Cummings Research Park site and an extensive Center-wide survey was conducted at NASA Stennis Space Center. None of these assessments indicated that contamination was likely or that a Level 2 Site Assessment would be needed. Based on current information available to NASA, contamination is also not anticipated at the Aerospace Technology Park site, but NASA would require a confirmatory Level 1 Site Assessment prior to contract or lease for this site. If contamination requiring remediation is discovered at a site and NASA decides to proceed with development of the NSSC at the site, NASA would require that a remediation plan be developed and implemented prior to construction. Similarly, if contamination requiring remediation is discovered during construction, NASA would require development and implementation of a remediation plan.

Cultural resources surveys have been completed for the Cummings Research Park site and for NASA Stennis Space Center, and the proposed action would not affect cultural resources at or in the vicinity of these proposed sites. Based on current information available for the Aerospace Technology Park site and surrounding areas, no historic structures would be affected and NASA does not anticipate the presence of major archeological resources, but would require confirmatory test borings for archeological resources prior to lease or contract as recommended by the Ohio Historic Preservation Office. If archeological resources are discovered at a site prior to construction or unanticipated discovery occurs during construction, NASA would consult with the respective State Historic Preservation Officer. If NASA decided

to proceed with implementation of the NSSC at the site and mitigation is required, NASA would develop and implement a mitigation plan. A mitigation plan may include adjusting the footprint, phasing construction, recovering data, curating artifacts, and providing the public with information about the site's history.

The proposed action would not result in disproportionately high and adverse environmental impacts on minority or low-income populations or affect children's environmental health or safety. NASA would develop an environmental justice strategy for the NSSC.

NASA would implement an EMS for the NSSC to prevent any potentially adverse impacts during operations.

Alternative B (Virtual Consolidation)

Under Alternative B, NASA would consolidate functions in a virtual environment without co-locating employees and contractors to a new location. NASA would relocate some personnel and equipment among existing Centers and require minor upgrades in facilities and equipment at existing Centers. Virtual consolidation, however, is unlikely to result in substantial direct, indirect, or cumulative environmental impacts not covered under existing Center permits and environmental reviews. In specific instances, and depending upon the circumstances, minor modifications of a facility at a Center could result in additional environmental review and permitting. NASA would continue to implement Center EMSs to prevent any potentially adverse impacts during operation of a Virtual NSSC. Alternative B would not fully meet the purpose and need for the NSSC.

Alternative C (No Action Alternative)

Under the No Action Alternative, NASA would not create an NSSC but may continue to relocate personnel and equipment among existing Centers and require minor upgrades in facilities and equipment at existing Centers as part of its on-going effort to improve efficiency and performance of its administrative operations. Such efforts are unlikely to result in substantial direct, indirect, or cumulative environmental impacts that are not covered under existing Center permits and environmental reviews. However, in specific instances, and depending upon the circumstances, minor modifications of a facility at a Center could result in additional environmental review and permitting. NASA would continue to implement Center EMSs to prevent any potentially adverse impacts during on-going operations. The No Action Alternative would not meet the purpose and need for the NSSC.

Based on these findings, NASA has determined that neither the Proposed Action under Alternative A to locate the NSSC at any of the three sites currently under consideration (A.2.2 (NASA Stennis Space Center), A.4.1 (Aerospace Technology Park), and A.4.4 (Cummings Research Park), Alternative B (Virtual Consolidation), nor Alternative C (No Action) would have a significant impact on the environment, and thus, an Environmental Impact Statement is not required.

The above draft FONSI is herby provided for public review and comment and in no way is meant to indicate that NASA has made a final decision on the environmental impact of the proposed project.

Olga Dominguez,

Deputy Assistant Administrator for Infrastructure, Management and Headquarters Operations.

TABLE 1.—SUMMARY OF POTENTIAL ENVIRONMENTAL IMPACTS OF ALTERNATIVES A, B, AND C

[Mitigation indicated in footnotes]

Resource [1]	Alternative A: Consolidation						Alternative B: Virtual consolidation	Alternative C: No action
	A.2.1 NASA Johnson Space Center	A.2.2 NASA Stennis Space Center	A.4.1 Aerospace Technology Park (by GRC)	A.4.2 Central Florida Research Park (CFRP) by KSC)	A.4.3 City Center at Oyster Point (by LaRC)	A.4.4 Cummings Research Park (CRP) (by MSFC)		
NSSC Location.	Clear Lake, TX.	Hancock County, MS.	Brook Park, OH.	Orlando, FL ..	Newport News, VA.	Huntsville, AL	.....	
Construction Required [2].	Yes, on-site ..	Yes, on-site ..	Yes, off-site ..	Yes, off-site ..	Yes, off-site ..	Yes, off-site ...	No	No.
Transportation and Traffic.	Low impact ..	Low impact ..	Low impact ..	Low impact ..	Low impact ..	Low impact	No impact	No impact.
Solid and Hazardous Waste Generation and Management.	Low to no impact [3].	Low to no impact [4].	Low to no impact [5].	Low to no impact [6].	Low to no impact [7].	Low to no impact [8].	No impact	No impact.
Public Services and Utilities [9].	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact..	Low to no impact.	Low to no impact.	No impact.
Communication.	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact.	No impact.
Land Use	Low impact ..	Low impact ..	Low impact ..	Low impact ..	Low impact ..	Low impact	No impact	No impact.
Noise	Low impact ..	Low impact ..	Low impact [10]	Low impact ..	Low impact ..	Low impact	No impact	No impact.
Air Quality	Low to no impact [11].	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact.	No impact	No impact.
Water Resources.	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact [12].	Low to no impact.	Low to no impact [13].	No impact	No impact.
Soils and Geology.	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact.	Low to no impact.	No impact	No impact.

TABLE 1.—SUMMARY OF POTENTIAL ENVIRONMENTAL IMPACTS OF ALTERNATIVES A, B, AND C—Continued

[Mitigation indicated in footnotes]

Resource [1]	Alternative A: Consolidation						Alternative B: Virtual consolidation	Alternative C: No action
	A.2.1 NASA Johnson Space Center	A.2.2 NASA Stennis Space Center	A.4.1 Aerospace Technology Park (by GRC)	A.4.2 Central Florida Research Park (CFRP) by KSC)	A.4.3 City Center at Oyster Point (by LaRC)	A.4.4 Cummings Research Park (CRP) (by MSFC)		
Biological Resources [14].	Low to no impact [15].	Low to no impact.	Low to no impact [16].	Low to no impact.	No impact	No impact	No impact	No impact.
Ecological Resources.	No impact	No impact	Wetlands impact to be mitigated [17].	No impact	No impact	No impact	No impact	No impact.
Cultural and Historic Resources [18].	Low to no impact [19].	No impact	Low to no impact [20].	Low to no impact [21].	Low to no impact [22].	No impact	No impact	No impact.
Environmental Justice [23].	No adverse impact.	No adverse impact.	No adverse impact.	No adverse impact.	No adverse impact.	No adverse impact.	No adverse impact.	No adverse impact.

[1] Alternative A: NASA NSSC Environmental Management System to be developed and full- or part-time NASA NSSC Environmental Manager to be designated. Alternatives B and C: Current NASA Center EMS would apply.

[2] Alternative A: All nominations required consistency with NASA's sustainable facilities policy.

[3] No Level/Phase 1 Site Assessment. Available information does not indicate contamination likely. Confirmatory Environmental Site Assessment for contamination required prior to lease or contract.

[4] Center-wide survey completed. No contamination indicated at the proposed site. State of Mississippi concurred.

[5] No Level/Phase 1 Site Assessment. Available information does not indicate contamination likely. Confirmatory Environmental Site Assessment for contamination required prior to lease or contract.

[6] No LevelPhase 1 Site Assessment. Available information does not indicate contamination likely. Confirmatory Environmental Site Assessment for contamination required prior to lease or contract.

[7] Level/Phase 1 Site Assessment completed. Level 2 Site Assessment not indicated.

[8] Level/Phase 1 Site Assessment completed. Level 2 Site Assessment not indicated.

[9] Alternative A: NASA NSSC Energy Manager, full- or part-time, to be designated. Alternatives B and C: Current on-site NASA Center Energy Manager.

[10] Noise impacts from adjoining airport to be mitigated in accordance with occupational health and safety regulations and local noise codes.

[11] Confirmatory Clean Air Act General Conformity Determination (NO_X and VOCs) may be required; construction scheduling adjustment and other mitigation may be required if results for relevant emissions exceed *de minimus* levels. Preliminary analysis indicated that levels would be well below de minimus levels.

[12] State Environmental Resources Permit would be required.

[13] State approved stormwater management plan would be required.

[14] All: If protected species are subsequently discovered on site or species on site are later designated for protection, NASA will consult with the U.S. Fish and Wildlife Service.

[15] Pre-construction survey required for migratory birds and, if results indicate presence, adjustment of construction schedule may be required.

[16] Pre-construction survey required for migratory birds and Indiana bat and if results indicate presence, adjustment of construction schedule may be required.

[17] Clean Water Act sec. 404 wetlands permit from the Army Corps of Engineers required; wetlands mitigation planned off-site.

[18] Alternative A: If unanticipated discovery occurs during excavation or construction, consultation with SHPO would be required to development mitigation plan if needed that may include adjustment of the footprint or construction schedule, data recovery, curation, and public education display.

[19] No impact to National Historic Landmarks at JSC. Confirmatory site testing for archeological resources may be required, and if results indicate presence, consultation with SHPO would be required to development mitigation plan if needed that may include adjustment of the footprint or construction schedule, data recovery, curation, and public education display.

[20] Site testing for archeological resources would be required as recommended by SHPO, and if results indicate presence, consultation with SHPO would be required to development mitigation plan if needed that may include adjustment of the footprint or construction schedule, data recovery, curation, and public education display.

[21] Confirmatory site testing for archeological resources may be required, and if results indicate presence, consultation with SHPO would be required to development mitigation plan if needed that may include adjustment of the footprint or construction schedule, data recovery, curation, and public education display.

[22] Confirmatory site testing for archeological resources may be required, and if results indicate presence, consultation with SHPO would be required to development mitigation plan if needed that may include adjustment of the footprint or construction schedule, data recovery, curation, and public education display.

[23] Alternative A: NASA NSSC EJ Strategy would be developed. Alternatives B and C: Current NASA Center EJ Strategy would apply.

[FR Doc. 05–2812 Filed 2–11–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting; Sunshine Act

TIME AND DATE: 10 a.m., Thursday, February 17, 2005.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.

2. Final Rule: Section 701.21(e), (f), and (g) of NCUA's Rules and Regulations, Loans to Members and Lines of Credit to Members.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–2889 Filed 2–10–05; 1:03 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

FPL Energy Seabrook, LLC, Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Title 10 of the Code of Federal Regulations (10 CFR) Section 50.90 for Facility Operating License No. NPF–86, issued to FPL Energy Seabrook, LLC (FPLE Seabrook or the licensee), for operation of the Seabrook Station, Unit No. 1 (Seabrook), located in Seabrook Township, Rockingham County, New Hampshire. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow FPLE Seabrook to increase the maximum reactor core power level from 3411 megawatts thermal (MWt) to 3587 MWt, which is an increase of approximately 5.2 percent of the rated core thermal power for Seabrook.

The proposed action is in accordance with the licensee's application dated March 17, 2004, as supplemented by a second letter dated March 17, 2004, and letters dated April 1, May 26, September 13 (two letters), and October 12, 2004.

The Need for the Proposed Action

The proposed action permits an increase in the licensed core thermal power from 3411 MWt to 3587 MWt for Seabrook and provides the flexibility to increase the potential electrical output of Seabrook.

Environmental Impacts of the Proposed Action

This assessment summarizes the non-radiological and radiological impacts on the environment that may result from the proposed action. The NRC staff based its conclusions on an analyzed core power level of 3659 MWt (3678 MWt Nuclear Steam Supply System (NSSS) power level). A power level of 3659 MWt is used based on the guaranteed core thermal output of 3587 MWt plus a 2-percent uncertainty allowance for calorimetric measurements.

Radiological Environmental Assessment

Radwaste Systems

Seabrook uses waste treatment systems designed to maintain normal operation offsite releases and doses within the requirements of 10 CFR Part 20 and 10 CFR Part 50, Appendix I. Regulatory guidance relative to the methodology used to determine if the radwaste effluent releases from a pressurized-water reactor meet the requirements of 10 CFR Part 20 and 10 CFR Part 50, Appendix I is provided in NUREG–0017, Revision 1, ''Calculation of Releases of Radioactive Materials in Gaseous and Liquid Effluents from Pressurized Water Reactors (PWR–GALE Code).'' The proposed power uprate will not change existing radioactive waste system design, plant operating procedures, or waste inputs as defined by NUREG–0017. As a result, the impact of the proposed power uprate on radwaste releases and Appendix I doses can be estimated using the methodology and equations found in NUREG–0017, Revision 1.

The reactor coolant contains activated corrosion products, which are the result of metallic materials entering the water and being activated in the reactor region. Under power uprate conditions, the feedwater flow increases with power and the activation rate in the reactor region increases with power. Additionally, non-condensible radioactive gas from the main condenser, along with air in-leakage, normally contains activation gases (principally N–16, O–19 and N–13) and fission product radioactive noble gases. This is the major source of radioactive gas. The proposed power uprate will increase the activity level of radioactive isotopes in the primary and secondary coolant. Due to leakage or process operations, fractions of these fluids are transported to the liquid and gaseous waste systems where they are processed prior to discharge. As the activity levels in the primary and secondary coolant are increased, the activity level of inputs into the waste systems are proportionately increased.

The methodology used for the processing of radioactive waste at Seabrook will not be impacted by operation at the proposed uprated power level, and the slight increase in activity discharged would continue to meet the requirements of 10 CFR part 20, 10 CFR part 50, Appendix I, and the annual doses projected in the Seabrook Final Environmental Statement (FES), NUREG–0895, dated December 1982. The NRC staff concludes that the proposed power uprate will not affect the ability to process liquid or gaseous radioactive effluents and the environmental impacts of the proposed power uprate are bounded by the impacts previously evaluated in the FES.

Occupational Dose

Occupational exposure from in-plant radiation primarily occurs during routine maintenance, special maintenance, and refueling operations. An increase in power at Seabrook will increase the activity inventory of fission products in the core by approximately the percentage of the power uprate. As a result, the radioactivity levels in the primary coolant, secondary coolant, and other radioactive process systems and components will also be impacted. Based on an uprate from the current licensed core power of 3411 MWt to the analyzed core power level of 3659 MWt (3678 MWt NSSS power level), normal operation radiation levels in areas near the reactor vessel are expected to increase but the annual average collective occupational dose after the power uprate is implemented would still be well below the value expected when the FES was published and as set in 10 CFR Part 20. In addition, plant programs and administrative controls such as shielding, plant chemistry, and the radiation protection program will help compensate for the potential increase in occupational dose. The proposed actions does not involve significant increases in the offsite doses to the public from noble gases, airborne particulates, iodine, tritium, or liquid effluents.

The NRC staff concludes that doses offsite will continue to be within the limits of 10 CFR Part 20, and the slight potential increase in occupational exposure are bounded by the impacts previously evaluated in the FES.

Postulated Accident Doses

The licensee's uprate analysis program included a reanalysis or evaluation of all aspects of large-break loss-of-coolant accident (LOCA), small-break LOCA, non-LOCA accidents, and NSSS and balance-of-plant (BOP) structures, systems, and components. Major NSSS components (*e.g.*, reactor pressure vessel, pressurizer, reactor coolant pumps, and steam generators); BOP components (*e.g.*, turbine, generator, and condensate and feedwater pumps); and major systems and sub-systems (*e.g.*, safety injection, auxiliary feedwater, residual heat removal, electrical distribution, emergency diesel generators, containment cooling, and the ultimate heat sink) have been assessed with respect to the bounding conditions

expected for operation at the uprated power level. Control systems (*e.g.*, rod control, pressurizer pressure and level, turbine overspeed, steam generator level, and steam dump) have been evaluated for operation at uprated power conditions. The results of all of the above analyses and evaluations have yielded acceptable results and demonstrate that all design basis acceptance criteria will continue to be met during uprated power operations.

For post-accident conditions, the existing post-accident dose rate maps are adequate for power uprate conditions. The resulting radiation levels were determined to be within current regulatory limits, and there would be no effect on the plant equipment, access to vital areas, or habitability of the control room. The licensee has determined that access to areas requiring post-accident occupancy will not be significantly affected by the power uprate. The calculated whole body and thyroid doses at the exclusion area boundary that might result from a postulated design-basis LOCA at uprated power conditions were determined to remain below established regulatory limits. Therefore, the NRC staff concludes that, for the proposed action, potential increased doses from postulated accidents are not significant.

Non-Radiological Environmental Assessment

In support of the proposed action, the licensee reviewed the non-radiological environmental impacts of the power uprate based on information submitted in the Seabrook Environmental Report—Operating License Stage (ER–OL), dated June 29, 1981, the Seabrook FES, and the requirements of the Environmental Protection Plan. Based on this review, the licensee concluded that the proposed power uprate has no significant effect on the non-radiological elements of concern and the plant will be operated within the bounds of impacts previously evaluated in the FES. In addition, the licensee states that existing Federal, State, and local regulatory permits presently in effect accommodate the power uprate without modification.

Water Use Impacts

The Atlantic Ocean serves as the normal supply of cooling water and as the ultimate heat sink for Seabrook. The cooling water is withdrawn from the Atlantic Ocean via a 17,000-foot long intake tunnel in the underlying bedrock, and is returned to the ocean through a similar discharge tunnel, approximately 16,500 feet long. The Circulating Water System (CWS) delivers cooling water from the Atlantic Ocean to the main condenser to remove the heat rejected by the turbine cycle and auxiliary systems and conveys the heated discharge water back to the Atlantic Ocean. CWS flow rate does not change for the power uprate. Additionally, groundwater is not used in current plant operations; therefore, there will be no additional impacts to onsite groundwater use as a result of the proposed action. The NRC staff concludes that the power uprate will not have a significant impact on water usage at Seabrook.

Thermal Discharge

The licensee indicates that, at uprated power conditions, with normal CWS flow, the circulating water outlet temperature will increase approximately 2.2 degrees Fahrenheit from the temperature associated with the current power level. However, the maximum CWS outlet temperature associated with the proposed action will continue to be within system design parameters.

The licensee evaluated the thermal impact associated with the power uprate relative to the Seabrook National Pollutant Discharge Elimination System (NPDES) permit. The New Hampshire Office of Ecosystem Protection issued NPDES Permit No. NH0020338 to the licensee for operation of Seabrook. The permit was last renewed on April 1, 2002. The NPDES permit specifies that Seabrook shall not cause a monthly mean temperature rise of more than 5 degrees Fahrenheit within 300 feet of the submerged diffuser in the direction of discharge. Historical data indicates that maximum monthly mean temperatures have been within all NPDES permit parameters. Projected maximum monthly mean temperatures predicted to occur in uprated conditions will continue to be below specified permit limits and bounded by the impacts previously evaluated in the FES. Therefore, the NRC staff concludes that there are no significant impacts from the increased thermal discharge to the Atlantic Ocean as a result of the proposed action.

Noise Evaluation

The noise effects due to operation of Seabrook at uprated power conditions were reviewed. The power uprate does not require any new motors or pumps. In addition, the turbine and the reactor building supply and exhaust fans will continue to operate at current speeds, and the associated noise levels will also be unaffected by uprated power operations. Consideration of other features affected by the power uprate did not reveal any new and significant sources of noise that would be expected to be noticeable at the site boundary. Therefore, the NRC staff concludes that the noise impacts of the proposed action are bounded by the impacts previously analyzed in the FES.

The non-radiological environmental impacts related to the proposed power uprate at Seabrook have been reviewed and there are no adverse impacts or significant changes required to the current NPDES Permit or other plant administrative limits. No changes to land use would result from the proposed action, and the proposed action does not involve any historic sites. Therefore, no new or different types of non-radiological environmental impacts are expected than those previously considered in the FES.

Summary

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the proposed action.

The details of the staff's safety evaluation will be provided in the license amendment that will be issued as part of the letter to the licensee approving the license amendment.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It has a small affect on non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the FES for Seabrook, NUREG–0895, dated December 1982.

Agencies and Persons Consulted

On October 18, 2004, the staff consulted with the New Hampshire State official, Michael Nawoj of the New Hampshire Office of Emergency Management, and with the Massachusetts State official, James Muckerheide of the Massachusetts Emergency Management Agency, regarding the environmental impact of the proposed action. The State officials had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 17, 2004, as supplemented by a second letter dated March 17, 2004, and letters dated April 1, May 26, September 13 (two letters), and October 12, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.* (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.)

Dated in Rockville, Maryland, this 8th day of December 2004.

For the Nuclear Regulatory Commission.

Darrell J. Roberts,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–2783 Filed 2–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 68, ''Criticality Accident Requirements,'' subsection (b)(1) for Facility Operating License No. DPR–65, issued to Dominion Nuclear Connecticut, Inc. (the licensee), for operation of the Millstone Power Station, Unit No. 2 (MP2), located in New London County, Connecticut. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.68, ''Criticality Accident Requirements,'' subsection (b)(1) during the handling and storage of spent nuclear fuel in a 10 CFR part 72 licensed spent fuel storage container that is in the MP2 spent fuel pool. The proposed action is in accordance with the licensee's application dated November 5, 2004.

The Need for the Proposed Action

Under 10 CFR 50.68(b)(1), the Commission sets forth the following requirement that must be met, in lieu of a monitoring system capable of detecting criticality events:

> Plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.

Section 50.12(a) allows licensees to apply for an exemption from the requirements of 10 CFR Part 50 if the regulation is not necessary to achieve the underlying purpose of the rule and other conditions are met. The licensee stated that compliance with 10 CFR 50.68(b)(1) is not necessary for handling the 10 CFR Part 72 licensed contents of the cask system, which is designed to preclude conditions for accidental criticality events, to achieve the underlying purpose of the rule.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemption described above would continue to satisfy the underlying purpose of 10 CFR 50.68(b)(1). The details of the NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent release off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the MP2 dated June 1973.

Agencies and Persons Consulted

On December 23, 2004, the staff consulted with the Connecticut State official, Michael Firsick, of the

Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 5, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.* (**Note:** As of the date of issuance of this letter, public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.)

Dated in Rockville, Maryland, this 8th day of February 2005.

For the Nuclear Regulatory Commission.

Darrell J. Roberts,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–2786 Filed 2–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on February 1, 2005 (70 FR 5233), that incorrectly listed H. B. Robinson Steam Electric Plant, Unit No. 2 in addition to Brunswick Steam Electric Plant, Units 1 and 2 in the title, and garbled the description of the amendments. This action is necessary to correct the erroneous notice in its entirety.

FOR FURTHER INFORMATION CONTACT: Brenda L. Mozafari, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–2020, e-mail: *blm@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 5251, in the first column, the notice for Carolina Power & Light Company is changed in its entirety to read as follows:

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: December 19, 2003, as supplemented January 14, 2004.

Brief Description of amendments: The amendments modify Technical Specification requirements to adopt the provisions of Industry/Technical Specification Task Force (TSTF) change 359, ''Increase Flexibility in Mode Restraints.''

Date of issuance: January 11, 2005.

Effective date: January 11, 2005.

Amendment Nos.: 233 and 260.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 17, 2004 (69 FR 7519).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 11, 2005.

No significant hazards consideration comments received: No.

Dated in Rockville, Maryland, this 2nd day of February 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–2787 Filed 2–11–05; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Briefing on Commission Functions and Procedures

AGENCY: Postal Rate Commission.

ACTION: Notice of briefing.

SUMMARY: On February 15, 2005, senior staff will describe the current functions and procedures of the Postal Rate Commission to executives of business mail users that utilize all classes of mail. Members of the Commission will attend and participate in discussion following the presentation.

DATES: February 15, 2005.

ADDRESSES: Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

Dated: February 9, 2005.

Steven W. Williams,

Secretary.

[FR Doc. 05–2809 Filed 2–11–05; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26751; 812–12987]

MBIA Global Funding, LLC; Notice of Application

February 8, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: MBIA Global Funding, LLC (''Applicant'') requests an order that would permit it to sell debt securities and non-voting preferred stock and use the proceeds to finance the business operations of its parent company, MBIA Inc., (''MBIA'') and certain companies controlled by MBIA.

FILING DATES: The application was filed on July 3, 2003, and amended on November 2, 2004. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 7, 2005, and should be accompanied by proof of service on applicant, in the form of an affidavit, or for lawyers, a certificate of

service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant: 113 King Street, Armonk, NY 10504.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at 202–942–0567, or Todd F. Kuehl, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware limited liability company and a direct wholly-owned subsidiary of MBIA.[1] MBIA, a Connecticut corporation, is an insurance holding company that, through its subsidiaries, is engaged primarily in providing financial guarantee insurance and investment management and financial services to public finance clients and financial institutions on a global basis.

2. Applicant was formed for the purpose of financing the operations of MBIA through the issuance of debt securities and non-voting preferred stock. Applicant presently has not issued any securities other than shares of its common stock, all of which MBIA owns, and medium term notes, which Applicant has offered and sold in private placement transactions in reliance on the exemption from the registration requirements of the Securities Act of 1933 (the ''Securities Act'') provided in section 4(2) of the Securities Act and pursuant to Regulations S under the Securities Act.

3. Applicant currently intends to offer debt securities and non-voting preferred stock in private placement transactions in reliance on the exemption from the registration requirements of the Securities Act provided in section 4(2) of the Securities Act or in transactions pursuant to Regulation S under the Securities Act. Applicant also seeks the flexibility to offer debt securities and non-voting preferred stock to the public in the United States pursuant to a registration statement under the Securities Act (such securities that are issued to or held by the public are referred to hereafter as ''Public Securities''). Applicant proposes to use the proceeds from any of the above offerings to make loans to or invest in MBIA and certain companies controlled by MBIA (the ''Controlled Companies''). Certain of the Controlled Companies may be excepted from the definition of investment company pursuant to certain provisions of section 3(c) of the Act (the ''Subject Controlled Companies''). Any other Controlled Company whose activities Applicant finances will meet the definition of ''company controlled by the parent company'' in rule 3a–5 under the Act.

4. All Public Securities will be unconditionally guaranteed by MBIA as to the payment of, as applicable, principal, interest, premium, dividends, liquidation preference and sinking fund payments. MBIA's guarantee of the Public Securities will provide that, in the event of any default in payment of any such amount, the holders of Public Securities may institute legal proceedings directly against MBIA to enforce the guarantee without first proceeding against Applicant.

5. Any convertible or exchangeable security issued by Applicant will be convertible or exchangeable only for securities issued by MBIA or for debt securities or non-voting preferred stock of Applicant meeting the applicable requirements of rule 3a–5(a)(1) through (a)(3). In addition, Applicant will invest in or loan at least 85% of any cash or cash equivalents it raises to either MBIA or one or more Controlled Companies as soon as practicable, but in no event later than six months after Applicant receives the cash or cash equivalents. Further, if Applicant borrows amounts in excess of the amounts required by MBIA or the Controlled Companies, Applicant will invest this excess in certain temporary investments pursuant to rule 3a–5 under the Act.

Applicant's Legal Analysis

1. Applicant requests an order under section 6(c) of the Act for an exemption from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(2) (i) in relevant part defines a ''parent company'' to be any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules or regulations under section 3(a) of the Act. Applicant states that while MBIA is not an investment company within the definition of section 3(a) of the Act (and/or is excepted from such definition by section 3(b)(1) of the Act), MBIA may rely on the exception from investment company status provided by section 3(c)(6). Applicant states that to the extent MBIA derives its non-investment company status from section 3(c)(6) of the Act, MBIA would not qualify as an eligible parent company under rule 3a–5(b)(2).

3. Rule 3a–5(b)(3)(i) in relevant part defines a ''company controlled by the parent company'' to be any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules and regulations under section 3(a) of the Act. Applicant proposes that it be allowed to provide financing to any Subject Controlled Company that will not satisfy the definition of ''company controlled by the parent company'' under rule 3a–5(b)(3) solely because it is excluded from the definition of investment company under section 3(c)(2), 3(c)(3), 3(c)(4), 3(c)(5)(A), 3(c)(5)(B) or 3(c)(6) of the Act.

4. Applicant states that its primary business purpose is to engage in financing activities that will provide funds for MBIA, the Controlled Companies and the Subject Controlled Companies. Applicant also states that neither MBIA nor any of the Subject Controlled Companies is engaged primarily in investment company activities.

5. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that its exemptive request meets the standards set out in section 6(c).

[1] Applicant also requests that the requested order apply to any other wholly-owned finance subsidiary of MBIA that MBIA establishes in the future provided that any such future finance subsidiary relying on the order will comply with the terms and condition stated in the application. Applicant is the only wholly-owned finance subsidiary of MBIA that presently intends to rely on the requested order.

Applicant's Condition

Applicant agrees that any order granting the requested relief will be subject to the following condition:

Applicant will comply with all of the provisions of rule 3a–5 under the Act, except that:

(1) MBIA will not meet the portion of the definition of ''parent company'' under rule 3a–5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(6) of the Act; and

(2) The Subject Controlled Companies will not meet the portion of the definition of ''company controlled by the parent company'' in rule 3a–5(b)(3)(i) solely because they are excluded from the definition of investment company under section 3(c)(2), 3(c)(3), 3(c)(4), 3(c)(5) or 3(c)(6) of the Act;

provided that:

(a) Any Subject Controlled Company excluded from the definition of investment company under section 3(c)(5) of the Act will fall within section 3(c)(5)(A) or section 3(c)(5)(B) solely by reason of its holdings of accounts receivable of either its own customers or of the customers of other Controlled Companies, or by reason of loans made by it to such Controlled Companies or customers, and

(b) MBIA and any Subject Controlled Company excluded from the definition of investment company under section 3(c)(6) of the Act will not be engaged primarily, directly, or through majority-owned subsidiaries in one or more of the businesses described in section 3(c)(5) of the Act (except as permitted in (a) above).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–591 Filed 2–11–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Information Architects Corporation; Order of Suspension of Trading

February 10, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Information Architects Corporation (''IACH'') because of questions regarding, among other things, (i) the authenticity of the Report of Independent Certified Public Accountants included in IACH's Form 10–KSB/A for the year ended December 31, 2003, filed with the Commission on April 22, 2004, including whether the audit report accompanying the financial statements was prepared and issued by the auditors identified; and (ii) the accuracy of statements made in an amended Form 10–KSB/A for the year ended December 31, 2003, filed with the Commission on October 15, 2004, including the statement that a second review of the financial statements is being performed by the company's auditors.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities related to IACH.

Therefore, *it is ordered,* pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in all securities, as defined in section 3(a)(10) of the Securities Exchange Act of 1934, issued by IACH, is suspended for the period from 9:30 a.m. e.s.t. on February 10, 2005, and terminating at 11:59 p.m. e.s.t. on February 24, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2864 Filed 2–10–05; 11:33 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Tekron, Inc.; Order of Suspension of Trading

February 10, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tekron, Inc. (''Tekron'') because of questions regarding, among other things, the authenticity of the Report of Independent Certified Public Accountants included in Tekron's Form 10–KSB for the annual period ended March 31, 2004, filed with the Commission on July 23, 2004, including whether the audit report accompanying the financial statements was prepared and issued by the auditors identified.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities related to Tekron.

Therefore, *it is ordered*, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in all securities, as defined in section 3(a)(10) of the Securities Exchange Act of 1934, issued by Tekron, is suspended for the period from 9:30 a.m. e.s.t on February 10, 2005, and terminating at 11:59 p.m. e.s.t on February 24, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2865 Filed 2–10–05; 11:33 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Greentech USA, Inc; Order of Suspension of Trading

February 10, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Greentech USA, Inc. (''Greentech'') because of questions regarding, among other things, (i) the authenticity of the Report of Independent Certified Public Accountants included in Greentech's Form 10–KSB for the year ended December 31, 2003, filed with the Commission on April 16, 2004, including whether the audit report accompanying the financial statements was prepared and issued by the auditors identified; and (ii) the accuracy of statements made in an amended Form 10–KSB/A for the year ended December 31, 2003, filed with the Commission on October 15, 2004, including the statement that a second review of the financial statements is being performed by the company's auditors.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities related to Greentech.

Therefore, *it is ordered*, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in all securities, as defined in section 3(a)(10) of the Securities Exchange Act of 1934, issued by Greentech, is suspended for the period from 9:30 a.m. e.s.t. on February 10, 2005, and terminating at 11:59 p.m. e.s.t. on February 24, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2866 Filed 2–10–05; 11:37 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51149, File No. SR–CHX–2004–26]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 by the Chicago Stock Exchange, Inc. Relating to the Demutualization of the Chicago Stock Exchange, Inc.

February 8, 2005.

I. Introduction

On November 24, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to effect the demutualization of CHX. CHX filed Amendment No. 1 to the proposal on December 15, 2004.[3] CHX filed Amendment Nos. 2 and 3 to the proposal on January 28, 2005.[4]

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on December 28, 2004.[5] The Commission received no comment letters regarding the proposal and Amendment No. 1. This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments on, and is simultaneously approving, on an accelerated basis, Amendment No. 3.

II. Description of Proposed Rule Change

Currently, CHX is a non-stock, not-for-profit Delaware corporation. CHX proposes to demutualize by reorganizing as a Delaware for-profit stock corporation that will be a subsidiary of a new Delaware for-profit stock holding company, CHX Holdings, Inc. (''CHX Holdings'').[6] CHX will continue to operate as a national securities exchange registered under Section 6 of the Act[7] and will continue to have self-regulatory responsibilities over its members. CHX will have its own Board of Directors that will manage CHX's business and affairs.

On the effective date of the demutualization, each person or entity that owns a membership in CHX will receive 1,000 shares of common stock of CHX Holdings for each membership that the person or entity owns. All of the issued and outstanding stock of CHX Holdings (450,000 shares of common stock) initially will be owned by the persons or entities that owned memberships in the Exchange.[8] Following the demutualization, persons and entities who have been qualified for membership under Articles 1, 2, or 3 of the Exchange's current rules and, as a result, have access to the Exchange's trading floor and other facilities (''qualified trading members'') will separately receive CHX trading permits entitling them to maintain their trading access to CHX.

Shares of CHX Holdings common stock and CHX trading permits will not be tied together. As a result, following the demutualization, former CHX members will be able to sell the shares of CHX Holdings common stock they receive in exchange for their CHX memberships, subject to the applicable restrictions described below, while retaining the ability to trade and operate on CHX pursuant to their CHX trading permits. Any other person who satisfies the regulatory requirements set forth in CHX's rules also will be able to obtain a CHX trading permit without regard to whether such person is a shareholder of CHX Holdings. Persons who hold trading permits in the demutualized Exchange will be called ''participants'' or ''participant firms.''

CHX's proposal included the CHX Holdings Certificate of Incorporation and Bylaws; proposed changes to the CHX Certificate of Incorporation and Bylaws that reflect the proposed changes in its corporate form; proposed governance changes that will, among other things, reduce the size of the CHX Board and make certain changes relating to CHX committees. In addition, CHX proposed changes to its membership rule that are necessary to implement the proposed trading permit structure.[9] Specifically, CHX proposed to replace references to ''members,'' ''member organizations,'' and ''member firms'' with references to ''participants'' and ''participant firms.'' CHX also proposed to delete references to sales of memberships and consolidate the current separate articles relating to members into a single article regarding participant firms. In its filing, CHX represented that it was not proposing to change its existing operational and trading structure.

A. Corporate Structure

1. CHX Holdings

CHX Holdings will be the parent company and sole shareholder of CHX. As sole shareholder of CHX, CHX Holdings will have the right to elect the Board of Directors of CHX and collect dividends, subject to certain provisions in the CHX rules that reflect regulatory requirements under the federal securities laws. The Certificate of Incorporation and the Bylaws of CHX Holdings will govern the activities of CHX Holdings.

(a) *CHX Holdings Board of Directors.* The business and affairs of CHX Holdings will be managed by its Board of Directors (''CHX Holdings Board''). The CHX Holdings Board will consist of between 10 and 16 persons, as determined by the CHX Holdings Board, including the Chief Executive Officer (''CEO'') of CHX Holdings.[10] Initially, the CHX Holdings Board will have 14 directors, who will be selected by the Chairman, Vice Chairman, and CEO of CHX from among the persons currently

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CHX revises several references in the original proposal to reflect the November 2004 vote of CHX's members to approve the demutualization.

[4] Amendment No. 3 replaced and superseded Amendment No. 2 in its entirety. In Amendment No. 3, CHX revises the proposal to: (1) Indicate that the staff of CHX will present to the Board of Directors of CHX Holdings for its approval a proposed new Bylaws provision stating that CHX Holdings will take such action as is necessary to insure that its officers, directors, and employees consent to the applicability of Article III, Section 3, and Article III, Section 5 of the CHX Holdings Bylaws with respect to CHX-related activities; (2) confirm CHX's continuing participation in various national market system plans following the demutualization; (3) correct a typographical error in the numbering of the articles of the CHX Bylaws; and (4) clarify language regarding the admission of persons to membership.

[5] *See* Securities Exchange Act Release No. 50892 (December 20, 2004), 69 FR 77796.

[6] To accomplish the demutualization, CHX proposes to establish two new Delaware stock for-profit corporations: CHX Holdings, a direct and wholly-owned subsidiary of CHX; and CHX Merger Sub, Inc. (''CHX Merger Sub''), a direct and wholly-owned subsidiary of CHX Holdings. Pursuant to an agreement and plan of merger, CHX Merger Sub will merge with and into CHX, with CHX surviving the merger as a Delaware for-profit stock corporation that is a direct and wholly-owned subsidiary of CHX Holdings.

[7] 15 U.S.C. 78f. The proposed rule change, as amended, includes: (1) CHX's revised rules; (2) CHX's revised Certificate of Incorporation; (3) CHX's revised Bylaws; (4) the Certificate of Incorporation for CHX Holdings; and (5) the Bylaws of CHX Holdings.

[8] CHX Holdings will have an additional 300,000 shares of authorized, but not issued, common stock and 25,000 shares of authorized, but not issued, preferred stock. *See* CHX Holdings Certificate of Incorporation, Article Fourth.

[9] CHX also proposed to delete the following rules relating to events that have occurred or to programs that CHX no longer offers: Article IB, ''E-Session Trading Privileges;'' Article XI, Rules 11, ''Mandatory Year 2000 Testing,'' and 12, ''Mandatory Decimal Pricing Testing;'' and Article XIII, Rule 4, ''Advertisements, Market Sales Literature Relating to Options and Communications to Customers.''

[10] *See* CHX Holdings Certificate of Incorporation, Article Sixth, Sections (b) and (c), and CHX Holdings Bylaws, Article II, Section 2.

serving on the Exchange's Board of Governors.[11]

The CHX Holdings Board will elect its Chairman from among the directors on the CHX Holdings Board.[12] The Chairman of the CHX Holdings Board may serve as the CEO of CHX Holdings but may hold no other office in CHX Holdings.[13] The Chairman of the CHX Holdings Board will nominate the Vice Chairman of the CHX Holdings Board, and the CHX Holdings Board will elect the Vice Chairman by majority vote.[14] The Vice Chairman may hold no other office in CHX Holdings.[15] Neither the Chairman nor the Vice Chairman of CHX Holdings will be subject to any limit on the number of terms that he or she may serve.

Each year, the Nominating and Governance Committee of CHX Holdings will nominate directors for the class of directors standing for election at the CHX Holdings annual meeting of shareholders.[16] Each CHX Holdings shareholder will be entitled to one vote for each share of stock he or she owns, absent a provision in the CHX Holdings Certificate of Incorporation fixing or denying voting rights.[17] At each annual meeting of the shareholders of CHX Holdings at which a quorum is present, the individuals receiving a plurality of the votes cast will be elected directors of CHX Holdings.[18]

(b) *Committees of CHX Holdings.* CHX Holdings will have an Executive Committee, a Nominating and Governance Committee, an Audit Committee, a Compensation Committee, and any other committees that the CHX Holdings Board establishes.[19] The CHX Holdings Board will appoint the CHX Holdings Nominating and Governance Committee, which will consist of six directors.[20] The Chairman and Vice Chairman of the CHX Holdings Board will appoint the Executive, Audit, and Compensation Committees of CHX Holdings, subject to the approval of the CHX Holdings Board.[21] The Vice Chairman of CHX Holdings will appoint the members of other standing and special committees, subject to the approval of the CHX Holdings Board.[22] Each committee will have the authority and responsibilities determined by the CHX Holdings Board.[23]

(c) *Officers of CHX Holdings.* The officers of CHX Holdings will be the CEO of CHX Holdings, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers, including a President, as the CHX Holdings Board or the CEO of CHX Holdings determine.[24] The CHX Holdings Board will appoint the CEO of CHX Holdings, who will manage the business affairs of CHX Holdings.[25] The officers of CHX Holdings will have the responsibilities and authority set out in the CHX Holdings Bylaws or given to them by the CEO of CHX Holdings. As an initial matter, the CEO of CHX will act as the CEO of CHX Holdings and will appoint as officers of CHX Holdings such officers of CHX as he believes are necessary to carry out the business of CHX Holdings.

(d) *Shareholder Restrictions.* The Certificate of Incorporation of CHX Holdings places certain restrictions on the ability to transfer, own, and vote the stock of CHX Holdings.

(i) *Restrictions on voting.* The Certificate of Incorporation of CHX Holdings generally prohibits any Person, either alone or together with its Related Persons,[26] from (a) voting or giving a proxy or consent with respect to shares representing more than 20% of the voting power of the then-issued and outstanding capital stock of CHX Holdings; or (b) entering into any agreement, plan, or arrangement that would result in the shares of CHX Holdings subject to that agreement, plan, or arrangement not being voted on a matter, or any proxy relating thereto being withheld, where the effect of that agreement, plan, or arrangement would be to enable any Person, alone or together with its Related Persons, possessing the right to vote or causing the vote of more than 20% of the voting power of the then-issued and outstanding capital stock of CHX Holdings.[27]

The CHX Holdings Board may waive the voting limitation by approving an amendment to the CHX Holdings Bylaws. Before approving a waiver, the CHX Holdings Board must determine that, among other things, the waiver of the voting limitation will not impair the ability of CHX to carry out its functions and responsibilities under the Act and will not impair the Commission's ability to enforce the Act.[28] In addition, the CHX Holdings Board also must determine that a Person and any Related Persons that would vote more than 20% of the outstanding stock of CHX Holdings is not subject to an applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act).[29] Finally, any amendment to the CHX Holdings Bylaws that would permit a Person to vote more than 20% of the outstanding stock of CHX Holdings must be filed with and approved by the Commission.[30]

(ii) *Restrictions on ownership.* The CHX Holdings Certificate of Incorporation generally prohibits any Person, alone or together with its Related Persons, from owning, of record or beneficially, shares constituting more than 40% of any class of capital stock of CHX Holdings.[31] The CHX Holdings Board may waive the ownership limitation by approving an amendment to the CHX Holdings Bylaws. Before approving the ownership waiver, the CHX Holdings Board must determine that, among other things, the waiver of the ownership limitation would not impair the ability of CHX to carry out its functions and responsibilities under

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[11] *See* CHX Holdings Certificate of Incorporation, Article Sixth, Section (g).

[12] *See* CHX Holdings Bylaws, Article II, Section 4.

[13] *See* CHX Holdings Bylaws, Article II, Section 4.

[14] *See* CHX Holdings Bylaws, Article II, Section 5.

[15] *See* CHX Holdings Bylaws, Article II, Section 5.

[16] *See* CHX Holdings Bylaws, Article II, Section 3.

[17] *See* CHX Holdings Bylaws, Article IV, Section 11.

[18] *See* CHX Holdings Bylaws, Article IV, Section 9.

[19] *See* CHX Holdings Bylaws, Article V, Section 1.

[20] *See* CHX Holdings Bylaws, Article II, Section 3.

[21] *See* CHX Holdings Bylaws, Article V, Section 2.

[22] *See* CHX Holdings Bylaws, Article II, Section 5, and CHX Holdings Bylaws, Article V, Section 2.

[23] *See* CHX Holdings Bylaws, Article V, Section 3.

[24] *See* CHX Holdings Bylaws, Article VI, Section 1.

[25] *See* CHX Holdings Bylaws, Article VI, Section 4.

[26] Article Fifth of the CHX Holdings Certificate of Incorporation defines a ''Person'' to mean ''an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.'' A ''Related Person'' means ''(A) with respect to any Person, all 'affiliates' and 'associates' of such Person (as such terms are defined in Rule 12b–2 under the Securities Exchange Act of 1934, as amended); (B) with respect to any Person that holds a permit issued by the Chicago Stock Exchange, Inc. to trade securities on the Chicago Stock Exchange (a 'Participant'), any broker or dealer with which a Participant is associated; and (C) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of the Corporation.'' *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (a).

[27] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(ii)(C).

[28] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iii)(B).

[29] 15 U.S.C. 78c(a)(39).

[30] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iii)(B) and paragraph (b)(iv).

[31] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(ii)(A). *See* also CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iii)(A).

the Act and would not impair the Commission's ability to enforce the Act.[32] In addition, the CHX Holdings Board also must determine that a Person and any Related Persons that would own more than 40% of the outstanding stock of CHX Holdings is not subject to an applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act).[33] Finally, any amendment to the CHX Holdings Bylaws that would permit a Person to own more than 40% of the outstanding stock of CHX Holdings must be filed with and approved by the Commission.[34]

The CHX Holdings Certificate of Incorporation places further restrictions on those shareholders of CHX Holdings that also hold CHX trading permits. Specifically, CHX Participants and their Related Persons may not own, of record or beneficially, shares constituting more than 20% of any capital stock of CHX Holdings.[35] The CHX Holdings Board may not waive this restriction.

(iii) *Other shareholder requirements.* The CHX Holdings has several provisions in its Certificate of Incorporation that will enable it to enforce the ownership and voting restrictions. Specifically, if a shareholder purports to sell, transfer, assign, or pledge any shares to any Person in a transaction that would violate the ownership restrictions described above, CHX Holdings will record on its books the transfer of only the number of shares that would not violate these restrictions and will treat the remaining shares as owned by the purported transferor for all purposes, including, without limitation, voting, payment of dividends, and distributions.[36] In addition, if any shareholder purports to vote, or to grant any proxy or enter into any agreement relating to the voting of shares that would violate the voting restrictions described above, CHX Holdings will not honor such vote, proxy, or agreement, and any shares subject to that arrangement will not be entitled to be voted to the extent of the violation.[37] Finally, if any shareholder purports to sell, transfer, assign, pledge, or vote any shares in a transaction that would violate the voting and ownership concentration limits, CHX Holdings will have the right to redeem such shares at a price equal to the par value of the shares, upon the approval of the CHX Holdings Board.[38]

A shareholder that alone or together with its Related Persons owns, of record or beneficially, five percent or more of the then outstanding shares of the capital stock of CHX Holdings, must immediately give the CHX Holdings Board written notice of such ownership.[39]

Shareholders may dispose of shares of CHX Holdings only in minimum lots of 1,000 shares.[40]

(e) *Self-Regulatory Function and Oversight.* The CHX Holdings Bylaws contain various provisions designed to protect the independence of the self-regulatory function of CHX and to clarify the Commission's oversight responsibilities. For example, pursuant to the CHX Holdings Bylaws, CHX Holdings must give due regard to the preservation of the independence of the self-regulatory function of CHX and to its obligations to investors and the general public. In addition, CHX Holdings is specifically prohibited from taking any actions that would interfere with the effectuation of any decisions by the Board of Directors of CHX (''CHX Board'') relating to CHX's regulatory functions, including disciplinary matters or the structure of the market it regulates, or that would interfere with CHX's ability to carry out its responsibilities under the Act.[41] The CHX Holdings Bylaws contain a specific requirement that all books and records of CHX, and the information contained therein, that reflect confidential information pertaining to the self-regulatory function of CHX, which comes into the possession of CHX Holdings must be retained in confidence by CHX Holdings and its Board, officers, employees, and agents, and must not be used for any non-regulatory purposes.[42]

The CHX Holdings Bylaws also provide that, to the extent they are related to the activities of CHX, the books, records, premises, officers, directors, agents, and employees of CHX Holdings are deemed to be the books, records, premises, officers, directors, agents, and employees of CHX for the purposes of, and subject to oversight pursuant to, the Act.[43]

With regard to the Commission's ability to oversee the activities of CHX, the CHX Holdings Bylaws provide that the officers, directors, employees, and agents of CHX Holdings, by virtue of their acceptance of such position, are deemed to agree to cooperate with the Commission and CHX in respect of the Commission's oversight responsibilities regarding CHX and the self-regulatory functions and responsibilities of CHX.[44] In addition, the CHX Holdings Bylaws provide that CHX Holdings and its officers, directors, employees, and agents, by virtue of their acceptance of such position, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and CHX, for the purpose of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder, arising out of, or relating to, the activities of CHX.[45] Further, CHX Holdings and its officers, directors, employees, and agents, by virtue of their acceptance of such position, are deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the U.S. federal courts, the Commission, or CHX; that the suit, action, or proceeding is in an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that the subject matter thereof may not be enforced in or by such courts or agency.[46]

Finally, the CHX Holdings Certificate of Incorporation and the CHX Holdings Bylaws provide that, before any amendment or repeal of a provision in the Certificate of Incorporation or the

[32] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iii)(C).

[33] 15 U.S.C. 78c(a)(39).

[34] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(iii)(B) and paragraph (b)(iv).

[35] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(ii)(B).

[36] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (d).

[37] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (d).

[38] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (e).

[39] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (c)(i).

[40] *See* CHX Holdings Bylaws, Article IX, Section 2.

[41] *See* CHX Holdings Bylaws, Article III, Section 1.

[42] *See* CHX Holdings Bylaws, Article III, Section 2.

[43] *See* CHX Holdings Bylaws, Article III, Section 3. The Commission notes that the staff of CHX has indicated that it will present to the CHX Holdings Board for its approval a proposed new CHX Holdings Bylaws provision confirming that CHX Holdings will take such action as is necessary to ensure that its officers, directors, and employees consent to the applicability of Article III, Section 3, and Article III, Section 5 of the CHX Holdings Bylaws with respect to CHX-related activities. *See* Amendment No. 3, *supra* note 4.

[44] *See* CHX Holdings Bylaws, Article III, Section 4.

[45] *See* CHX Holdings Bylaws, Article III, Section 5. The Commission notes that the staff of CHX has indicated that it will present to the CHX Holdings Board for its approval a proposed new CHX Holdings Bylaws provision stating that CHX Holdings will take such action as is necessary to ensure that its officers, directors, and employees consent to the applicability of Article III, Section 3, and Article III, Section 5 of the CHX Holdings Bylaws with respect to CHX-related activities. *See* Amendment No. 3, *supra* note 4.

[46] *See* CHX Holdings Bylaws, Article III, Section 5.

Bylaws, respectively, will be effective, it must be submitted to the CHX Board and if the CHX Board determines that the amendment or repeal of the provision must be filed with the Commission before it may be effective, the amendment or repeal of the provision will not be effective until it is filed with, or filed with and approved by the Commission, as the case may be.[47]

2. CHX

Following the demutualization, CHX will become a Delaware for-profit stock corporation that will be wholly-owned by CHX Holdings. CHX, however, will continue to be the entity registered as a national securities exchange under Section 6 of the Act[48] and, accordingly, CHX will continue to be a self-regulatory organization (''SRO'').

(a) *Governing Documents and CHX Rules.* The CHX Certificate of Incorporation, CHX Bylaws, and CHX rules will govern the activities of CHX. CHX's rules and Bylaws are proposed to reflect, among other things, CHX's status as wholly-owned subsidiary of CHX Holdings, its management by the CHX Board and its designated officers, and its self-regulatory responsibilities pursuant to CHX's registration under Section 6 of the Act.

(b) *Board of Directors.* The CHX Board will consist of between 10 and 16 persons, as determined by the CHX Board, including the CEO of CHX.[49] Initially, the CHX Board will have 14 directors, whom the Chairman, Vice Chairman, and CEO of CHX will select from among the persons currently serving on the Exchange's Board of Governors. The directors will be divided into three classes, which will be as nearly equal in number as the total number of directors then constituting the entire CHX Board permits, and will serve staggered three-year terms with the term of office of one class expiring each year.[50]

The CHX Board will be comprised of the CEO of CHX, persons who qualify as ''Participant Directors,'' and persons who qualify as ''Public Directors.'' [51] One-half of the number of CHX directors comprising the entire CHX Board must be Public Directors, and the remaining directors, other than the CEO of CHX, will be Participant Directors.[52] The CHX Board's initial directors will include the CEO of CHX, seven Public Directors, and six Participant Directors.

The CHX Board will elect its Chairman from among the CEO of CHX and the Public Directors.[53] The Chairman of the CHX Board may serve as the CEO of CHX but may hold no other office in CHX.[54] The Participant Directors will elect the Vice Chairman of the CHX Board, who may not hold any other office in CHX, from among the Participant Directors.[55]

(c) *Nomination and Election of Directors.* After the formation of the initial CHX Board, the CHX Nominating and Governance Committee, which will be comprised of three Public Directors and three Participant Directors appointed by the CHX Board, will nominate directors for each director position standing for election at the annual meeting of shareholders that year.[56] Because CHX Participants will not be shareholders of CHX, they are not entitled to directly elect members of the CHX Board. CHX Holdings, as the sole shareholder of CHX, will have the sole right and the obligation to vote for the directors of the CHX Board. However, to ensure that CHX Participants are afforded fair representation as required under Section 6(b)(3) of the Act, CHX has proposed a procedure whereby CHX Participants will be involved in the selection of Participant Director nominees.[57]

Specifically, the CHX Nominating and Governance Committee will hold two open meetings with CHX participants for the purpose of receiving recommendations of candidates for election to the Participant Director positions. The CHX Nominating and Governance Committee's initial candidates for nomination will be announced to CHX participants, who will then have the opportunity to identify additional candidates for nomination by submitting a petition signed by at least ten participants. If no petitions are submitted within the time frame prescribed by the CHX Bylaws, the CHX Nominating and Governance Committee will nominate the candidates it initially identified. If one or more valid petitions are submitted, the participants will vote on the entire group of potential candidates, and the individuals receiving the largest number of votes will be the persons approved by the participants as Participant Director nominees. Each participant will have one vote per trading permit with respect to each Participant Director position that is to be filled.[58]

(d) *Committees.* The CHX Board will have the following standing committees: (1) An Executive Committee; (2) a Nominating and Governance Committee; (3) an Audit Committee; (4) a Compensation Committee; (5) a Regulatory Oversight Committee (''ROC''); (6) a Finance Committee; and (7) a Judiciary Committee.[59]

As noted above, the CHX Nominating and Governance Committee will be appointed by the CHX Board. The Chairman and Vice Chairman of the CHX Board will appoint CHX's Executive, Audit, Finance, and Compensation Committees, subject to the approval of the CHX Board. CHX's Executive, Compensation, and Audit Committees will have a majority of Public Directors.[60] The Executive Committee will have the powers that the

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[47] *See* CHX Holdings Certificate of Incorporation, Article Thirteenth, and CHX Bylaws, Article VIII.

[48] 15 U.S.C. 78f.

[49] *See* CHX Certificate of Incorporation, Article Fifth, paragraph (b), and CHX Bylaws, Article II, Section 2(a). CHX's current Board of Governors consists of 24 governors.

[50] *See* CHX Certificate of Incorporation, Article Fifth, paragraph (d), and CHX Bylaws, Article II, Section 2(c).

[51] *See* CHX Certificate of Incorporation, Article Fifth, paragraph (c), and CHX Bylaws, Article II, Section 2(b). CHX's Bylaws define a ''Public Director'' as a director who (i) is not a participant or an officer, managing member, partner or employee of an entity that is a participant, (ii) is not an employee of CHX, CHX Holdings or any of their affiliates, (iii) is not a broker or dealer or an officer or employee of a broker or dealer, or (iv) does not have any other material business relationship with CHX, CHX Holdings, or any of their affiliates or any broker or dealer. *See* CHX Bylaws, Article II, Section 2(b). A ''Participant Director'' is a director who is a CHX participant or an officer, managing member, or partner of an entity that is a CHX participant. A ''participant'' is any individual, corporation, partnership, or other entity that holds a permit issued by CHX to trade securities on CHX. *See* CHX Bylaws, Article II, Section 2(b). *See also* CHX Rules, Article I, Rule1(l). The definition of ''Public Director'' will replace the definitions of ''non-industry governor'' and ''public governor'' set out in the Exchange's current governing documents.

[52] *See* CHX Certificate of Incorporation, Article Fifth, paragraph (c), and CHX Bylaws, Article II, Section 2(b).

[53] *See* CHX Bylaws, Article II, Section 4(a).

[54] *See* CHX Bylaws, Article II, Section 4(a).

[55] *See* CHX Bylaws, Article II, Section 5(a).

[56] *See* CHX Bylaws, Article II, Section 3. In addition, the CHX Nominating and Governance Committee will periodically review the organization and governance structure of CHX. *See* CHX Rules, Article IV, Rule 11.

[57] After the Commission approves the proposal, CHX Holdings will enter into a voting agreement with CHX confirming its obligation to vote for the directors nominated through the process set out in the CHX Bylaws.

[58] No participant or participant firm is allowed to hold more trading permits than are necessary to the conduct of business on the Exchange. All trading permits must be held by an active participant or must be held by an active participant firm, where the participant firm has assigned an active participant as its nominee. *See* CHX Rules, Article II, Rule 2(e).

[59] *See* CHX Bylaws, Article IV, Section 1. Information about the composition and responsibilities of the Exchange's committees appears in Article IV of the Exchange's rules.

[60] *See* CHX Rules, Article IV, Rules 2, 8, and 9. The proposal revises CHX's current rules governing its Audit and Compensation Committees by providing that a majority, not just 50%, of the members of the Audit and Compensation Committees must be Public Directors.

CHX Board delegates to it and, between meetings of the CHX Board, will have the rights, powers, authority, duties, and obligations of the CHX Board not otherwise delegated to another committee, except the authority to propose amendments to the CHX Certificate of Incorporation, adopt an agreement of merger or consolidation, recommend to shareholders the sale, lease or exchange of all or substantially all or of the property and assets of CHX, or recommend to the shareholders a dissolution of CHX or the revocation of a dissolution.[61]

The revised description of the role of the CHX Audit Committee indicates that, among other things, the Audit Committee has ''direct responsibility and authority to engage and oversee the work of the independent public accountant retained to audit the Exchange's financial statements * * *.''[62]

The Vice Chairman of the CHX Board will appoint CHX's ROC, subject to the approval of the Public Directors of the CHX Board. Five of the seven members of the ROC will be Public Directors.[63] In its filing, CHX represented that it believed that the composition, responsibilities, and appointment mechanism associated with the ROC were consistent with the requirements set out in the Commission's September 30, 2003, settlement order with CHX.[64]

The CEO of CHX will continue to appoint CHX's Judiciary Committee.[65] The Vice Chairman of the CHX Board will appoint other committees, including the newly-formed Participant Advisory Committee of CHX, subject to the approval of the CHX Board.[66] The CHX Participant Advisory Committee, which will be comprised entirely of CHX participants, will recommend rules for adoption by the CHX Board and advise the CHX management regarding enhancements to the Exchange's trading facilities and other matters that affect participants.[67] According to CHX, the Participant Advisory Committee is designed to provide participants with a formal opportunity to share their concerns and ideas with the CHX management.

Each committee will have the authority and responsibilities prescribed for it in the CHX Bylaws or rules or by the CHX Board.[68]

(e) *Management.* The officers of CHX will be the CEO, one or more Vice Presidents, a Secretary, and a Treasurer, and such other officers, including a President, as the CHX Board or the CEO may determine.[69] The CEO of CHX will be responsible to the CHX Board for the management of its business affairs.[70]

(f) *Self-Regulatory Function and Oversight.* As noted above, following the demutualization CHX will continue to be registered as a national securities exchange under Section 6 of the Act and thus will continue to be an SRO.[71] As an SRO, CHX will be obligated to carry out its statutory responsibilities, including enforcing compliance by CHX participants and participant firms with the provisions of the federal securities laws and the applicable rules of CHX. Further, CHX will retain the responsibility to administer and enforce the rules that govern CHX's and its members' activities. In addition, CHX will continue to be required to file with the Commission, pursuant to Section 19(b) of the Act[72] and Rule 19b–4 thereunder,[73] any changes to its rules and governing documents.

Like the Bylaws of CHX Holdings, the Bylaws of CHX contain specific provisions relating to the self-regulatory function of CHX.[74] For example, the CHX Bylaws require the CHX Board to consider applicable requirements under Section 6(b) of the Act in connection with the management of the Exchange.[75] In addition, meetings of the CHX Board and of its committees that pertain to the self-regulatory function of CHX or to the structure of the market CHX regulates must be closed to persons who are not members of the CHX Board or CHX officers, staff, counsel, or other specifically identified persons.[76] Further, the CHX books and records reflecting confidential information relating to the self-regulatory function of CHX must be kept confidential and must not be used for non-regulatory purposes, and the books and records of CHX must be maintained in the U.S.[77]

The CHX Bylaws also provide that any revenues received by CHX from regulatory fees or penalties must be applied to fund the legal and regulatory operations of CHX and may not be used to pay dividends.[78]

(g) *Restrictions on ownership.* Although there are no percentage-based restrictions on the ownership of CHX, the CHX Certificate of Incorporation confirms that CHX Holdings is the sole shareholder of CHX.[79] Any changes to this provision of the CHX Certificate of Incorporation cannot take effect until they are filed with and approved by the Commission pursuant to Section 19(b) of the Act.[80]

(h) *National Market System Plans.* CHX currently is a participant in various national market system (''NMS'') plans, including the Consolidated Tape Association Plan, the Consolidated Quotation System Plan, the Intermarket Trading System Plan, and the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP'') Plan.[81] These plans are joint industry plans entered into by SROs for the purpose of addressing last sale reporting, quotation reporting, and intermarket equities trading. Following the completion of the demutualization, CHX, in its continuing role as the SRO, will continue to serve as the voting member of these NMS plans, and a representative of CHX will continue to serve as CHX's representative with respect to dealing with these plans.[82]

B. Trading Permits

Following CHX's demutualization, persons and firms who have been qualified for membership under Articles 1, 2, or 3 of the Exchange's current rules and, as a result, have access to the Exchange's trading floor and other

[61] *See* CHX Rules, Article IV, Rule 2. The proposal also deletes the requirements that members of the Executive Committee be chosen (a) with a view to providing representation to the various geographical areas in which there are member organizations that support the Exchange; and (b) with a view to having persons on the committee who are interested in and knowledgeable about the Exchange's business operations and the securities industry as a whole.

[62] *See* CHX Rules, Article IV, Rule 9.

[63] *See* CHX Rules, Article IV, Rule 4.

[64] *See* In the Matter of the Chicago Stock Exchange, Securities Exchange Act Release No. 48566 (September 30, 2003) (Admin. Proc. File No. 3–11282) (Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Censure, a Cease-and-Desist Order and Other Relief) (''CHX Settlement Order'').

[65] *See* CHX Rules, Article IV, Rule 7.

[66] *See* CHX Bylaws, Article IV, Section 2.

[67] *See* CHX Rules, Article IV, Rule 10.

[68] *See* CHX Bylaws, Article IV, Section 3.

[69] *See* CHX Bylaws, Article V, Section 1.

[70] *See* CHX Bylaws, Article V, Section 4.

[71] *See* 15 U.S.C. 78c(a)(26).

[72] 15 U.S.C. 78s(b).

[73] 17 CFR 240.19b–4.

[74] *See* CHX Bylaws, Article X, Section 1.

[75] *See* CHX Bylaws, Article X, Section 1. Section 6(b) of the Act requires, among other things, that the Exchange's rules be designed to protect investors and the public interest. It also requires that the Exchange be so organized that it has the capacity to carry out the purposes of the Act and to enforce compliance by its members with the Act, the rules and regulations thereunder, and the rules of the Exchange.

[76] *See* CHX Bylaws, Article X, Section 2.

[77] *See* CHX Bylaws, Article X, Sections 3 and 4.

[78] *See* CHX Bylaws, Article X, Section 5. Regulatory penalties that are intended to benefit customers, by, for example, providing restitution, must be provided to those customers and CHX will not be use them for any purpose.

[79] *See* CHX Certificate of Incorporation, Article Fourth.

[80] 15 U.S.C. 78s(b).

[81] *See* Amendment No. 3, *supra* note 4.

[82] *See* Amendment No. 3, *supra* note 4.

facilities will receive trading permits entitling them to maintain their trading access to CHX. Each trading permit will constitute a revocable license allowing the holder of the permit to access CHX trading facilities in the same manner as previously authorized for CHX's qualified trading members.[83] According to CHX, the demutualization and the implementation of the use of trading permits will not change current CHX member access to the Exchange or their ability to execute transactions.

Persons holding trading permits of CHX will be ''members'' of CHX for purposes of the Act and will be characterized as ''participants'' in CHX subject to CHX's regulatory jurisdiction.[84] Trading permit holders will not have any ownership interest in CHX or in CHX Holdings by virtue of their trading permits.

Following the demutualization, CHX will require persons seeking trading permits to complete appropriate application materials and registration forms, satisfy regulatory requirements, and pay processing charges and application fees. This process will be substantially similar to the current membership application process.[85] An individual participant may obtain only one trading permit, and a participant firm may obtain multiple trading permits and may assign a nominee to each trading permit. Each person transacting business on the Exchange will require a trading permit. For example, a CHX specialist firm with 50 co-specialists would need to obtain 50 trading permits and register each co-specialist as a nominee. No participant or participant firm will be allowed to hold more trading permits than are necessary to conduct business on the Exchange, and all trading permits must be held by an active participant or an active participant firm, where the participant firm has assigned an active participant as its nominee.[86]

Once issued, a CHX trading permit will be effective for one year following its issuance date and will renew automatically for an additional one-year term on each anniversary of the issuance date, unless the trading permit holder provides the Exchange with 60 days' prior written notice of the trading permit holder's waiver of renewal. If the participant waives the right to renew the permit, it will expire at the end of the then-current term.[87] A trading permit generally may not be sold, leased, or otherwise transferred, although a participant firm may transfer its trading permit from the name of one nominee employee to the name of another nominee employee, with the approval of CHX.[88] CHX will have the ability to suspend or revoke a trading permit for the same reasons that it is currently entitled to suspend or revoke a membership and/or sell a seat.[89]

Currently, CHX rules permit a person (referred to as an ''approved lessor'') to purchase a membership solely for the purpose of providing a financing mechanism for another person seeking access to CHX.[90] Following demutualization, no person will be permitted to operate as an approved lessor or otherwise lease trading access to the Exchange.

There will be nominal processing charges and application fees relating to the issuance of trading permits. In addition, all participants and participant firms will be subject to an annual trading permit fee of $6,000 per year, payable monthly, for each trading permit. This fee is identical to CHX's current fee for membership dues. These fees appear in the schedule of Participant Fees and Credits.

C. Other Provisions in the Certificate of Incorporation and Bylaws

1. Shareholder Ownership

The Bylaws for CHX Holdings and CHX contain provisions relating to issues associated with shareholder ownership, including provisions relating to the timing and conduct of meetings, record dates, quorum requirements, proxies, and other matters.[91] According to CHX, these provisions were designed to reflect current corporate practices and are identical for CHX Holdings and CHX.

2. Updated provisions of the CHX Certificate of Incorporation and Bylaws

The Exchange proposes to make several changes to CHX's Bylaws and Certificate of Incorporation to modernize CHX's governing documents. Among other things, these changes streamline the description of CHX's corporate purpose; confirm that the CHX Board has the authority to set the CHX Board's compensation; set out specific provisions relating to the authority of Exchange officers to enter into contracts, sign checks, and handle the funds of the Exchange; and provide that the Exchange will advance expenses, in appropriate circumstances, to directors, officers, and committee members of CHX who are named as defendants in certain actions relating to Exchange business.[92]

D. Description of Amendment No. 3

In Amendment No. 3, CHX proposes to revise the proposal to: (1) Confirm CHX's continuing participation in various NMS plans following the demutualization; (2) correct a typographical error in the numbering of the articles of the CHX Bylaws; (3) indicate that the staff of CHX will present to the CHX Holdings Board for its approval a proposed new CHX Holdings Bylaws provision stating that CHX Holdings will take such action as is necessary to insure that its officers, directors, and employees consent to the applicability of Article III, Section 3, and Article III, Section 5 of the CHX Holdings Bylaws with respect to CHX-related activities; [93] and (4) revise language regarding the admission of new participants.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[94] In

[83] *See* CHX Rules, Article II, Rule 2.

[84] *See* CHX Rules, Article I, Rule 1(l) (definition of ''Participant'').

[85] *See* CHX Rules, Articles II and III.

[86] *See* CHX Rules, Article II, Rule 2(e).

[87] *See* CHX Rules, Article II, Rules 3(d) and 7.

[88] *See* CHX Rules, Article II, Rule 6.

[89] *See* generally, CHX Rules, Articles VII and XII.

[90] *See* CHX Rules, Article IA.

[91] *See* CHX Holdings Bylaws, Article IV, and CHX Bylaws, Article III.

[92] *See* CHX Certificate of Incorporation, Article Third (corporate purpose); CHX Bylaws Article II, Section 15 (CHX Board compensation), Article IX (contracts, loans, checks, and deposits), and Article VI (indemnification and advancing of expenses).

[93] Article III, Section 3 of the CHX Holdings Bylaws provides that, to the extent they are related to the activities of CHX, the books, records, premises, officers, directors, agents, and employees of CHX Holdings will be deemed to be the books, records, premises, officers, directors, agents, and employees of CHX for the purposes of, and subject to oversight pursuant to, the Act. In addition, Article III, Section 5 of the CHX Holdings Bylaws provides that CHX Holdings and its officers, directors, employees, and agents, by virtue of their acceptance of such position, shall be deemed irrevocably to submit to the jurisdiction of the U.S. federal courts, the Commission, and CHX, for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder, arising out of, or relating to, the activities of CHX. Article III, Section 5, also states that CHX Holdings and its officers, directors, employees, and agents, by virtue of their acceptance of such position, are deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding, any claims that it or they are not personally subject to the jurisdiction of the U.S. federal courts, the Commission, or CHX; that the suit, action, or proceeding is in an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that the subject matter thereof may not be enforced in or by such courts or agency.

[94] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Act,[95] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act. The Commission also finds that the proposed rule change, as amended, is consistent with Section 6(b)(3) of the Act,[96] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Further, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[97] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. CHX Holdings as Sole Shareholder

Following completion of the demutualization, CHX Holdings will be the sole shareholder of CHX. Section 19(b) of the Act [98] and Rule 19b–4 thereunder [99] require an SRO to file proposed rule changes with the Commission. Although CHX Holdings is not an SRO, certain provisions of its Certificate of Incorporation and Bylaws may be rules of an exchange [100] if they are the stated policies, practices, or interpretations, as defined in Rule 19b–4 of the Act, of CHX. Any proposed rule or any proposed change in, addition to, or deletion from, the rules of an exchange must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder. Accordingly, CHX has filed the CHX Holdings Certificate of Incorporation and CHX Holdings Bylaws with the Commission. If CHX Holdings decides to change its Certificate of Incorporation or Bylaws, it must submit such changes to the CHX Board so that it can determine if the changes must be filed with, and approved by, the Commission. The Commission believes that these provisions will assist CHX in fulfilling its self-regulatory obligations and in administrating and complying with the requirements under the Act.

B. Changes in Control of CHX

The Commission believes that the restrictions in the CHX Holdings Certificate of Incorporation on direct and indirect changes in control of CHX Holdings are sufficient to enable CHX to carry out its self-regulatory responsibilities and to enable the Commission to fulfill its responsibilities under the Act.[101]

Specifically, as proposed, CHX will be wholly-owned subsidiary of CHX Holdings, *i.e.*, CHX Holdings will own all of the shares of CHX. The CHX Certificate of Incorporation identifies this ownership structure.[102] Any changes to the CHX Certificate of Incorporation, including any change to the provision that identifies CHX shareholders, must be filed with, and approved by, the Commission pursuant to Section 19(b) of the Act.[103]

In addition, the CHX Holdings Certificate of Incorporation imposes limitations on direct and indirect changes in control of CHX Holdings through voting and ownership limitations placed on the capital stock of CHX Holdings (whether common or preferred stock) and allows CHX Holdings to monitor potential changes in control through a notification requirement once a threshold percentage of ownership of capital stock is reached.[104] Specifically, the CHX Holdings Certificate of Incorporation prohibits any Person, either alone or together with its Related Persons, from voting or giving a proxy or consent with respect to shares representing more than 20% of the voting power of the issued and outstanding shares of CHX Holdings.[105] Furthermore, the CHX Holdings Certificate of Incorporation limits the right of any Person, either alone or together with its Related Persons, to enter into any agreement with respect to the withholding of any vote or proxy where the effect of the agreement would be to enable any person or group to obtain more than 20% of the outstanding voting power.[106] The CHX Holdings Certificate of Incorporation also restricts the ability of any Person, either alone or together with its Related Persons, from owning, directly or indirectly, shares constituting more than 40% of the outstanding shares of capital stock of CHX Holdings.[107]

If any shareholder votes, sells, transfers, assigns, or pledges any shares in violation of the voting and ownership limitations, CHX Holdings will treat those shares as owned by the transferor for all purposes, including, without limitation, voting, payment of dividends, and distributions.[108] In addition, if any shareholder votes, sells, transfers, assigns, or pledges any shares in violation of the voting and ownership limitations, CHX Holdings has the right to redeem those shares at a price equal to the par value thereof, upon the approval of the CHX Holdings Board.[109]

The CHX Holdings Board has the authority to waive these voting and ownership limitations by adopting an amendment to the CHX Holdings Bylaws. The CHX Holdings Board must determine that the waiver of a voting or ownership requirement will not impair CHX's ability to carry out its self-regulatory functions and will not impair the Commission's ability to enforce the Act. In addition, the CHX Holdings Board must determine that the person to whom it is giving either a voting or

[95] 15 U.S.C. 78f(b)(1).

[96] 15 U.S.C. 78f(b)(3).

[97] 15 U.S.C. 78f(b)(5).

[98] 15 U.S.C. 78s(b).

[99] 17 CFR 240.19b–4.

[100] Section 3(a)(27) of the Act defines the rules of an exchange to be the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, and such stated policies, practices, or interpretations of such exchange as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange. 15 U.S.C. 78c(a)(27).

[101] The Commission notes that it is in the process of reviewing issues related to new ownership structures of SROs and has proposed rules relating to the ownership of SROs, including limiting the restrictions on ownership and voting to members of an SRO or a facility of an SRO. *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (''Proposed Rulemaking''). *See also* Securities Exchange Act Release No. 51019 (January 11, 2005), 70 FR 2829 (January 18, 2005) (extending the comment period for the Proposed Rulemaking until March 8, 2005).

[102] *See* CHX Certificate of Incorporation, Article Fourth.

[103] 15 U.S.C. 78s(b).

[104] The CHX Holdings Certificate of Incorporation requires that any person, either alone or together with its affiliates or associates or any other person, who at any time owns five percent or more of then outstanding shares of capital stock and who has the right to vote in the election of the CHX Holdings Board, shall, immediately upon so owning five percent or more of the then outstanding shares of such stock, give the CHX Holdings Board a written notice of such ownership and update that notice promptly after an ownership change of a specified percentage. *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (c).

[105] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(ii)(C). *See* note 26, *supra,* for the definitions of ''Person'' and ''Related Person.''

[106] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(ii)(C).

[107] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(ii)(A).

[108] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (d).

[109] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (e).

ownership waiver is not subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act [110]). Finally, the CHX Holdings Board must submit any amendment to the CHX Holdings Bylaws to the CHX Board, and if the CHX Board determines that the proposed change to the CHX Holdings Bylaws must be filed with the Commission, then the CHX Holdings Bylaw change will not be effective until it is filed with, or filed with and approved by the Commission, as the case may be.[111] The Commission believes that any such amendment to the CHX Holdings Bylaws would be a proposed rule change that would need to be filed with the Commission pursuant to Section 19(b) of the Act.[112] The proposed rule change would present the Commission with an opportunity to determine what additional measures, if any, might be necessary to provide sufficient regulatory jurisdiction over the proposed controlling person.

CHX has also proposed to require CHX Holdings shareholders that own, of record or beneficially, five percent or more of the then outstanding shares to give the CHX Holdings Board written notice of such ownership. This notice should enable CHX Holdings to monitor the ownership of its stock to ensure that no limitation is reached.[113]

The CHX Holdings Certificate of Incorporation also provides that no Person, either alone or together with its Related Persons, who is a trading permit holder of CHX may own, directly or indirectly, shares constituting more than 20% of any class of capital stock of CHX Holdings.[114] The Commission finds that the limitation on ownership of shares of CHX Holdings by CHX trading permit holders is consistent with the Act. Under the member-owned exchange model, a member who trades securities through the facilities of an exchange can have an ownership interest in the exchange. A regulatory concern can arise if a member's interest becomes so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member. For example, a member that directly or indirectly controls an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from diligently monitoring the member's conduct or from punishing any conduct that violates the rules of the exchange or the federal securities laws. An exchange also might be reluctant to diligently monitor and conduct surveillance of trading conduct and to enforce its rules and the federal securities laws against a member that the exchange relies on for a large source of capital. The Commission believes that the proposed limitation would help mitigate the conflicts of interest that could occur if a member were to control a significant stake in the Exchange through ownership in shares in the Exchange's parent company and are necessary and appropriate to help ensure that the Exchange can effectively carry out its statutory obligations under Section 6(b) of the Act.[115]

C. Regulatory Jurisdiction Over CHX Holdings

The Commission believes that the terms of CHX Holdings Bylaws provide the Commission with sufficient regulatory jurisdiction over the controlling parties of the Exchange to carry out its oversight responsibilities under the Act. The CHX Holdings Bylaws provide that, to the extent that they are related to the activities of CHX, the books, records, premises, officers, directors, agents, and employees of CHX Holdings are deemed to be the books, records, premises, officers, directors, agents, and employees of CHX for purposes of and subject to oversight pursuant to the Act.[116] This provision would enable the Commission to exercise its authority under Section 19(h)(4) of the Act [117] with respect to officers and directors of CHX Holdings, because all such officers and directors, to the extent that they are acting on matters related to CHX activities, would be deemed to be officers and directors of CHX. Furthermore, the books and records of CHX Holdings, to the extent that they are related to the activities of CHX, are subject to the Commission's examination authority under Section 17(b)(1) of the Act,[118] as these records would be deemed to be the records of CHX itself.

In addition, pursuant to the CHX Holdings Bylaws, CHX Holdings officers, directors, employees, and agents, by virtue of their acceptance of such position, are deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and CHX for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder, arising out of, or relating to, the activities of the Exchange.[119] Moreover, CHX Holdings and such officers, directors, employees, and agents, by virtue of their acceptance of any such position, are deemed to waive and agree not to assert by way of motion as a defense or otherwise in any such suit, action, or proceeding any claims that it or they are not personally subject to the jurisdiction of the U.S. federal courts, the Commission, or CHX, that the suit, action, or proceeding is an inconvenient forum, or that the venue of the suit, action, or proceeding is improper, or that the subject matter of that suit, action, or proceeding may not be enforced in or by such courts or agency.[120] Finally, the CHX Holdings Bylaws provide that the officers, directors, employees, and agents of CHX Holdings, by virtue of their acceptance

[110] 15 U.S.C. 78c(a)(39).

[111] *See* CHX Holdings Bylaws, Article VIII. A similar requirement applies to changes to the CHX Holdings Certificate of Incorporation. *See* CHX Holdings Certificate of Incorporation, Article Thirteenth.

[112] 15 U.S.C. 78s(b).

[113] The Commission believes that CHX Holdings should disclose periodically, or otherwise make available upon request, information regarding the number of outstanding shares of its capital stock, so that persons that own stock of CHX Holdings can determine whether they are reaching or have reached any of the thresholds that restrict that person's ability to vote or own the shares or require that person to provide written notice under the Article Fifth, paragraph (c) of the CHX Holdings Certificate of Incorporation.

[114] *See* CHX Holdings Certificate of Incorporation, Article Fifth, paragraph (b)(ii)(B). Unlike the 40% ownership and 20% voting limitations discussed above, the CHX Holdings Board may not waive the 20% ownership limitation applicable to CHX trading permit holders.

[115] 15 U.S.C. 78f(b).

[116] *See* CHX Holdings Bylaws, Article III, Section 3. As noted above, the staff of CHX has indicated that it will present to the CHX Holdings Board for its approval a proposed new CHX Holdings Bylaws provision stating that CHX Holdings will take such action as is necessary to ensure that its officers, directors, and employees consent to the applicability of Article III, Section 3, and Article III, Section 5 of the CHX Holdings Bylaws with respect to CHX-related activities. *See* Amendment No. 3, *supra* note 4.

[117] 15 U.S.C. 78s(h)(4). Section 19(h)(4) authorizes the Commission, by order, to remove from office or censure any officer or director of a national securities exchange if it finds, after notice and an opportunity for hearing, that such officer or director: (1) Has willfully violated any provision of the Act or the rules and regulations thereunder, or the rules of a national securities exchange; (2) willfully abused his or her authority; or (3) without reasonable justification or excuse, has failed to enforce compliance with any such provision by a member or person associated with a member of the national securities exchange.

[118] 15 U.S.C. 78q(b)(1).

[119] *See* CHX Holdings Bylaws, Article III, Section 5. As noted above, the staff of CHX has indicated that it will present to the CHX Holdings Board for its approval a proposed new CHX Holdings Bylaws provision stating that CHX Holdings will take such action as is necessary to ensure that its officers, directors, and employees consent to the applicability of Article III, Section 3, and Article III, Section 5 of the CHX Holdings Bylaws with respect to CHX-related activities. *See* Amendment No. 3, *supra* note 4.

[120] *See* CHX Holdings Bylaws, Article III, Section 5.

of such position, are deemed to agree to cooperate with the Commission and CHX in respect of the Commission's oversight responsibilities regarding CHX and the self-regulatory functions and responsibilities of CHX.[121]

The Commission also notes that, even in the absence of these provisions of the CHX Holdings Bylaws, Section 20(a) of the Act[122] provides that any person with a controlling interest in CHX would be jointly and severally liable with and to the same extent that CHX is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act[123] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder, and Section 21C of the Act[124] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. The Commission believes that, taken together, these provisions grant the Commission sufficient jurisdictional authority over the controlling persons of CHX. Moreover, CHX is required to enforce compliance with these provisions because they are ''rules of the exchange'' within the meaning of Section 3(a)(27) of the Act.[125] A failure on the part of CHX to enforce its rules could result in suspension or revocation of CHX's registration under Section 19(h)(1) of the Act.[126]

D. Self-Regulatory Function of CHX

Following the demutualization, the rules and bylaws of CHX will reflect its status as a wholly-owned subsidiary of CHX Holdings, under management of the CHX Board and its designated officers and with self-regulatory obligations pursuant to CHX's registration as a national securities exchange under Section 6 of the Act.

As the sole shareholder of CHX, the Commission believes that CHX Holdings' activities with respect to its ownership of CHX must be consistent with CHX's obligations under the Act. Under the CHX Holdings Bylaws, the CHX Holdings Board and the officers, employees, and agents of CHX Holdings must give due regard to the preservation of the independence of the self-regulatory function of CHX and to its obligations to investors and the general public and not take any actions that would interfere with the effectuation of any decisions by the CHX Board relating to its regulatory functions or the structure of the market it regulates or which would interfere with the ability of CHX to carry out its responsibilities under the Act.[127] In addition, all books and records of CHX reflecting confidential information pertaining to its self-regulatory function (including but not limited to disciplinary matters, trading data, trading practices, and audit information) which come into the possession of CHX Holdings, and the information contained therein, must be retained in confidence by CHX Holdings and its directors, officers, employees, and agents and must not be used for any non-regulatory purposes.[128] The Commission believes that these provisions, which are designed to acknowledge the need to maintain the independence of the self-regulatory role of CHX following the demutualization and protect from improper use information pertaining to its self-regulatory function, are appropriate.

Further, the Commission notes that the CHX Bylaws expressly require that the CHX Board consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act,[129] including the requirement that the rules of the Exchange be designed to protect investors and the public interest and the requirement that the Exchange be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with members with the provisions of the Act, the rules and regulations thereunder and with the rules of the Exchange.[130] In the Commission's view, this provision should serve to remind the CHX Board that it must consider the interests of the Exchange's constituents and the requirements of the Act when taking action on behalf of the Exchange.

E. Fair Representation

Section 6(b)(3) of the Act[131] requires that the rules of an exchange assure fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors be representative of issuers and investors and not be associated with a member of the exchange or with a broker or dealer. In addition, Section 6(b)(1) of the Act[132] requires that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act.

CHX has proposed to amend the size and composition of its Board. Specifically, the CHX Board will have no less than ten and no more than 16 directors. At least 50% of the total number of directors on the CHX Board must be Public Directors and the remaining directors will be Participant Directors and the CEO.

Because CHX's participants will not be shareholders of CHX, they will not directly elect members of the CHX Board. As the sole shareholder of CHX, CHX Holdings will have the sole right and obligation to vote for the director nominees nominated by the CHX Nominating and Governance Committee.[133] The CHX Bylaws, however, establish a procedure that will allow participants to be involved in the selection of candidates to fill Participant Director positions on the CHX Board.[134] Each participant will have one vote per trading permit with respect to each Participant Director position to be filled.[135]

Under the procedures for selecting Participant Director candidates,[136] the CHX Nominating and Governance Committee, which will have three Participant Directors and three Public Directors, will hold two open meetings with CHX participants for the purpose of receiving recommendations of candidates for election to the position of Participant Director. The CHX Nominating and Governance Committee's initial candidates for nomination will be announced to CHX participants, who will then have the opportunity to identify additional candidates for nomination by submitting a petition signed by at least ten participants. If no petitions are

[121] *See* CHX Holdings Bylaws, Article III, Section 4.

[122] 15 U.S.C. 78t(a).

[123] 15 U.S.C. 78t(e).

[124] 15 U.S.C. 78u–3.

[125] 15 U.S.C. 78c(a)(27).

[126] 15 U.S.C. 78s(h)(1).

[127] *See* CHX Holdings Bylaws, Article III, Section 1.

[128] *See* CHX Holdings Bylaws, Article III, Section 2.

[129] 15 U.S.C. 78f(b).

[130] *See* CHX Bylaws, Article X, Section 1.

[131] 15 U.S.C. 78f(b)(3).

[132] 15 U.S.C. 78f(b)(1).

[133] Upon approval of the demutualization, CHX Holdings will enter into a voting agreement with CHX confirming its obligation to vote for the directors nominated through the process set out in the CHX Bylaws.

[134] *See* CHX Bylaws, Article II, Section 3.

[135] As noted above, no participant or participant firm is allowed to hold more trading permits than are necessary to the conduct of business on the Exchange. All trading permits must be held by an active participant or must be held by an active participant firm, where the participant firm has assigned an active participant as its nominee. *See* CHX Rules, Article II, Rule 2(e).

[136] *See* CHX Bylaws, Article II, Section 3.

submitted within the time frame prescribed by the CHX Bylaws, the CHX Nominating and Governance Committee will nominate the candidates it initially identified. If one or more valid petitions are submitted, the participants will vote on the entire group of potential candidates, and the individuals receiving the largest number of votes will be the persons approved by the participants as Participant Director nominees. The CHX Nominating and Governance Committee will nominate only those persons whose names have been presented to, and approved by, CHX's participants pursuant to the procedures set forth in the CHX Bylaws.[137] CHX Holdings, as the sole shareholder of CHX, will have the sole right and obligation to vote for the director nominees nominated by the CHX Nominating and Governance Committee.[138]

In addition to their representation on the CHX Nominating and Governance Committee, CHX participants will participate on other committees of CHX. For example, three of the seven members of the Committee on Exchange Procedure will be CHX participants, the Judiciary Committee will be comprised of five participants and/or general partners or officers of participant firms, and the ROC will include one on-floor Participant Director and one off-floor Participant Director. In addition, the newly-formed Participant Advisory Committee will have not less than five members, all of whom will be participants.[139] Among other things, the Participant Advisory Committee will recommend rules for adoption by the CHX Board and advise the CHX management regarding enhancements to the Exchange's trading facilities and other matters that affect participants. According to CHX, the Participant Advisory Committee is designed to provide participants with a formal opportunity to share their concerns and ideas with the CHX management.

Certain committees of the CHX Board will be comprised of a majority of Public Directors. Specifically, the Executive Committee, the Compensation Committee, and the Audit Committee will be comprised of a majority of Public Directors.[140] The CHX Nominating and Governance Committee will consist of three Public Directors and three Participant Directors.[141] Five of the seven members of the ROC will be Public Directors, and the Vice Chairman of the CHX Board will appoint the members of the ROC, subject to the approval of the Public Directors of the CHX Board.[142] As noted above, CHX represents that the composition, responsibilities, and appointment mechanism associated with the ROC are consistent with the requirements set out in the CHX Settlement Order.[143]

The Commission finds that the requirement that at least one-half of the directors of the CHX Board be Public Directors is consistent with Sections 6(b)(1) and 6(b)(3) of the Act, which requires that one or more directors be representative of issuers and investors. The Commission also finds that the requirement that the remaining directors, other than the CEO of CHX, be Participant Directors and the manner in which such directors will be nominated and elected, together with the representation of CHX participants on key committees, satisfies the fair representation requirements in Section 6(b)(3) of the Act. The Commission notes, however, that after the demutualization trading privileges will be separated from corporate ownership of CHX and will be available exclusively through trading permits. Therefore, the Commission expects that trading permits will not be issued in a manner that would undermine or circumvent the requirement in Section 6(b)(3) of the Act for fair representation of members. The Commission also notes that participants will retain a voice in the administration of the affairs of CHX following the demutualization, including rulemaking and the disciplinary process, through participants' participation on various CHX committees.

Finally, the Commission notes that it is in the process of reviewing a range of governance issues relating to SROs, including possible steps to strengthen the framework for the governance of SROs and ways to improve the transparency of the governance procedures of all SROs and has proposed rules in furtherance of this goal.[144] Depending on the results of the proposed rules, CHX may be required to make further changes to strengthen its governance structure. The Commission also believes that the CHX Board should continue to monitor and evaluate its governance structure and process on an ongoing basis and propose further changes as appropriate.

F. Dividends

With the demutualization, the holders of capital stock of CHX will have the dividend and other distribution rights of a shareholder in a Delaware stock corporation. The CHX Bylaws allow the CHX Board to declare dividends.[145] However, the CHX Bylaws further provide that any revenues received by CHX from regulatory fees or regulatory penalties will be applied to fund the legal and regulatory operations, including the surveillance and enforcement activities, of CHX and will not be used to pay dividends.[146] This limitation would preclude CHX from providing dividends derived from regulatory fees or penalties to the sole shareholder of CHX, *i.e.*, CHX Holdings. As a result, CHX Holdings would not be able to provide dividends derived from regulatory fees or penalties belonging to CHX to the shareholders of CHX Holdings. The Commission finds that the prohibition on the use of regulatory fees or penalties to fund dividends is consistent with Section 6(b)(1) of the Act because it will ensure that the regulatory authority of CHX is not used improperly to benefit CHX Holdings and its shareholders.

IV. Accelerated Approval of Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 to the proposal prior to the thirtieth day after date of notice of filing thereof in the **Federal Register**. Amendment No. 3 clarifies the proposal by confirming CHX's continuing participation in various NMS plans following the demutualization and by correcting a typographical error in the numbering of the articles of the CHX Bylaws. In addition, Amendment No. 3 strengthens the proposal by indicating that the staff of CHX will present to the Board of Directors of CHX Holdings for its approval a proposed new CHX Holdings Bylaws provision stating that CHX Holdings will take such action as is necessary to ensure that its officers, directors, and employees consent to the applicability of Article III, Section 3, and Article III, Section 5 of the CHX Holdings Bylaws with respect to CHX-related activities. Finally, Amendment No. 3 clarifies the language in the CHX's rules regarding the admission of members to be consistent with the language in the Act. Accordingly, the Commission finds that it is consistent

[137] *See* CHX Bylaws, Article II, Section 3(b).

[138] *See* note 134, *supra.*

[139] *See* CHX Rules, Article IV, Rule 10.

[140] *See* CHX Rules, Article IV, Rules 2, 8, and 9.

[141] *See* CHX Bylaws, Article II, Section 3.

[142] *See* CHX Rules, Article IV, Rule 4.

[143] *See* note 64, *supra,* and accompanying text.

[144] *See* Proposed Rulemaking, supra note 101.

[145] *See* CHX Bylaws, Article XI, Section 2.

[146] For purposes of this provision, regulatory penalties include restitution and disgorgement of funds intended for customers. *See* CHX Bylaws, Article X, Section 5.

with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 3 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX 2004–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–CHX–2004–26. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2004–26 and should be submitted on or before March 7, 2005.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[147] that the proposed rule change (SR–CHX–2004–26), as amended, is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[148]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–588 Filed 2–11–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4966]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 p.m. on Wednesday, March 16, 2005, in Room 6319 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to begin preparations for the 48th Session of the International Maritime Organization (IMO) Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety to be held at IMO Headquarters in London, England from September 12th to 16th.

The primary matters to be considered include:

—Development of explanatory notes for harmonized SOLAS Chapter II–1;
—Large passenger ship safety;
—Review of the Intact Stability Code;
—Review of the Offshore Supply Vessel Guidelines;
—Harmonization of damage stability provisions in other IMO instruments;
—Review of the 2000 HSC Code and amendments to the DSC Code and the 1994 HSC Code;
—Tonnage measurement of open-top containerships.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Paul Cojeen, Commandant (G–MSE), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1308, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: February 4, 2005.

Clayton L. Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 05–2806 Filed 2–11–05; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4964]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 p.m. on Friday, February 25, 2005, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 13th Session of the International Maritime Organization (IMO) Sub-Committee on Flag State Implementation to be held at IMO Headquarters in London, England from March 7th to 11th.

The primary matters to be considered include:

—Measures to enhance maritime security;
—Responsibilities of Governments and measures to encourage flag State compliance;
—Port State Control (PSC) on seafarer's working hours;
—Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;
—Regional cooperation on port State control;
—Reporting procedures on port State control detentions and analysis and evaluation of reports;
—Mandatory reports under International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
—Casualty statistics and investigations;
—Review of the Code for the investigation of marine casualties and incidents;
—Development of provisions on transfer of class;
—Review of the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC)—(resolution A.948(23));
—Development of guidelines for port State control under the 2004 Ballast Water Management (BWM) Convention;
—Development of survey guidelines required by regulation E–1 of the 2004 BWM Convention;
—Development of guidelines for port State control for MARPOL Annex VI;

[147] 15 U.S.C. 78s(b)(2).

[148] 17 CFR 200.30–3(a)(12).

—Review of reporting requirements for reception facilities;
—Illegal, unregulated and unreported (IUU) fishing and implementation of resolution A.925(22);
—Consideration of International Association of Classification Societies (IACS) unified interpretations.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Commander Paul Thorne, Commandant (G–MOC), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1116, Washington, DC 20593–0001 or by calling (202) 267–2978.

Dated: February 4, 2005.

Clay Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 05–2807 Filed 2–11–05; 8:45 am]

BILLING CODE 4710–09–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832. (SC: 0008ZN2).

Comments should be sent to the Agency Clearance Officer no later than April 15, 2005.

SUPPLEMENTARY INFORMATION: Type of Request: Regular submission; proposal for a reinstatement of an expired collection, without change, which expired on 8/31/1998 (OMB Control number: 3316–0101).

Title of Information Collection: Customer Surveys of Boating Activities on TVA Reservoirs.

Frequency of Use: Once every four years.

Type of Affected Public [Individuals, Business, Federal, State, and Local Government, and Marinas.]: Individuals.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1,000.

Estimated Total Annual Burden Hours: 170.

Estimated Average Burden Hours Per Response: 0.17.

Need For and Use of Information: This survey will collect information from recreational users of TVA lakes on their needs and requirements. The information will be used to assess TVA's Lake operations and to identify potential areas of improvement that will benefit the recreation boating public.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 05–2766 Filed 2–11–05; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 21, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*see* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–20149.

Date Filed: January 21, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 11, 2005.

Description: Application of Kalitta Air, L.L.C., requesting a certificate of public convenience and necessity authorizing it to operate scheduled foreign air transportation of property and mail between the United States and various foreign points for which it currently holds exemption authority, as well as several other foreign points to which it may initiate service in the near future.

Renee V. Wright,

Acting Program Manager, Alternate Federal Register Liaison.

[FR Doc. 05–2759 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 23–22, Guidance for Approved Model List (AML) Supplemental Type Certificate (STC) Approval of Part 23 Airplane Avionics Installations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23–22. This advisory circular (AC) sets guidelines for using the Approved Model List (AML) Supplemental Type Certificate (STC) process for the installation approval of avionics for 14 CFR, part 23 airplanes. It also applies to airplanes certified under a prior certification basis, such as CAR 3 or bulletin 7–A. Guidance provided in this AC applies only to avionics installations using the AML STC process. For other types of modifications to part 23 airplanes seeking to use the AML STC process, the Aircraft Certification Office (ACO) should coordinate with the Small Airplane Directorate. Avionics AML STC guidance provided in this AC addresses the following: (1) Avionics eligible for the AML STC process, (2) Model Qualification Process used by the STC holder and the FAA to either create or edit the AML, and (3) Level of Detail required for the installation instructions for an AML STC, including a list of acceptable equipment that can be integrated under the STC.

Material in this AC is neither mandatory nor regulatory in nature and does not constitute a regulation. In addition, this material is not to be construed as having any legal status and should be treated accordingly. However, it is designed to provide standardization guidelines for AML STC approvals. The AML STC process may be used whenever the ACO and the applicant agree that it is suitable. This AC is not applicable to any products certified under part 25, 27, or 29.

The draft advisory circular was issued for Public Comment on October 8, 2004 (69 FR 60452). When possible,

comments received were used to modify the draft advisory circular.

DATES: Advisory Circular (AC) 23–22 was issued by the Manager, Small Airplane Directorate on January 27, 2005.

How To Obtain Copies: A paper copy of AC 23–22 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.airweb.faa.gov/AC.*

Issued in Kansas City, Missouri on January 27, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2802 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Glider Towing as a Restricted Category Special Purpose Flight Operation

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability of Federal Aviation Administration policy.

SUMMARY: This notice announces glider towing as a restricted category special purpose operation under Title 14 of the Code of Federal Regulations (14 CFR) § 21.25(B)(7), for aircraft type certificated under 14 CFR 21.25(a)(1).

DATES: This policy is effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Graham Long, AIR–110, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3715, FAX: (202) 237–5340, or e-mail: *9-AWA-AIR110-GNL2@faa.gov*.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) published proposed policy to include the flight operation of glider towing as a restricted category special purpose under Title 14 of the Code of Federal Regulations (14 CFR) § 21.25(b)(7). The comment period closed October 22, 2004. All comments received by the FAA were in favor of the policy. Accordingly, the Director of the Aircraft Certification Service specified, on behalf of the Administrator, that glider towing is a restricted category special purpose flight operation, limited to civil-derived restricted category aircraft certificated under 14 CFR 21.25(a)(1). This action is believed to increase the number of glider tow aircraft available to glider clubs throughout the country, by making available to them aircraft that are currently certificated for other uses, such as agricultural spraying.

Dated: Issued in Washington, DC, on February 8, 2005.

Susan J. M. Cabler,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–2800 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–11]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 15, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- *Web Site: http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management 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.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

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: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on February 10, 2005.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–20226.
Petitioner: Avantair, Inc.
Section of 14 CFR Affected: 14 CFR § 91.1045.
Description of Relief Sought: To allow Avantair, Inc., to operate its 11 Piaggio P180 aircraft without a cockpit voice recorder installed and operational onboard those aircraft for a period of 30 days after the required date of February 17, 2005.

[FR Doc. 05–2863 Filed 2–10–05; 11:37 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: U.S. 127 N/S.R. 28, Cumberland and Fentress Counties, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Cumberland and Fentress Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Brian K. Brasher, Acting Field Operations Team Leader, Federal Highway Administration—Tennessee Division Office, 640 Grassmere Park Road, Suite 112, Nashville 37211, Telephone: 615–781–5763

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation (TDOT), will prepare an EIS on a proposal to improve U.S. 127/S.R. 28 in Cumberland and Fentress Counties, Tennessee. The proposed project will improve U.S. 127N/S.R. 28 between I–40 at Crossville and S.R. 62 at Clarkrange, a distance of approximately 14 miles. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand, improve safety, and help achieve existing local and regional economic development goals.

Alternatives under consideration include (1) Taking no action; (2) widening the existing two-lane highway to five lanes along the existing alignment; (3) widening the existing two-lane highway to five lanes at the project beginning and end and widening to four lanes between the two proposed five-lane sections; and (4) constructing a four-lane section on new location west of the existing highway from north of Tabor Loop to south of Clear Creek then rejoining the existing highway alignment and improving it to four lanes to just south of Clarkrange, where it would transition to a new five-lane section along the existing roadway.

The alternatives development, screening process, Citizens' Resource Team input, and current project public involvement process will be incorporated into the NEPA process. A Public Involvement Plan has been developed to include the public in the project development process. The plan proposes utilizing the following outreach efforts to provide information and solicit input: Newsletters, the Internet, e-mail, informal meetings, public information meetings and other efforts as necessary and appropriate. As part of the scoping process federal, state, and local agencies and officials; private organizations; citizens; and interest groups will have an opportunity to provide input into the development of the EIS and identify issues of concern. It is anticipated that one formal agency scoping meeting will be held. A public hearing will be held upon completion of the Draft EIS and public notice will be given of the time and place of the hearing. A toll-free information line and a Web site have already been put in place for the project.

The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA contact person identified above at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed program.)

Issued on: February 8, 2005.

Brian K. Brasher,

Acting Field Operations Team Leader.

[FR Doc. 05–2764 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–19185]

Notice of Request for Clearance of a New Information Collection: Bus Crash Causation Study

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA), the FMCSA is announcing that the new information collection request described in this notice is being sent to the Office of Management and Budget (OMB) for review and approval. We are required under the PRA to send information collection requests to OMB. This information collection is related to a study of the causation of commercial motor vehicle crashes mandated by the Motor Carrier Safety Improvement Act of 1999. The bus study will fulfill the bus portion of this mandate and aid in the determination of the reasons for, and factors contributing to, serious bus crashes. The **Federal Register** notice announcing a 60-day comment period on this information collection was published on August 23, 2004 (69 FR 51879).

DATES: Please submit comments by March 16, 2005.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Craft, Program Manager, Bus Crash Causation Study, (202) 366–0324, Office of Information Management, Analysis Division, Federal Motor Carrier Safety Administration, 400 7th Street SW., Suite 8214, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Bus Crash Causation Study.

OMB Control Number: None.

Background: No national database exists that contains information describing the causes of, the reasons for, and the factors contributing to bus crashes. The purpose of the Bus Crash Causation Study is to gather this information for serious bus crashes. With this data, FMCSA and the States will be able to more effectively implement countermeasures to reduce the occurrence and severity of these crashes. The study is required under section 224 of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748 (December 9, 1999). Buses are defined as vehicles designed or used to transport 9 to 15 people (including the driver) for compensation, or more than 15 people for any purpose.

The FMCSA will conduct a three-part bus crash causation study beginning in 2004. The three parts of the study are as follows: (1) Mining current databases, such as the Fatality Analysis Reporting System (FARS), Buses Involved in Fatal Accidents (BIFA) and Motor Carrier Management Information System (MCMIS) for causation factors; (2) evaluating insurance companies data to assess the quality, quantity and usefulness of bus crash causation data; and (3) collecting extensive data on a sample of crashes in the field. FMCSA field staff, FMCSA contractors and New Jersey State Police (NJSP) will collect more than 400 pieces of data on 50–100 crashes involving commercial buses in

northern and central New Jersey throughout 2005. Transit and school buses are excluded from the study. The New Jersey State safety agencies will also be important partners in this study at several levels including: data collection form design, crash notification, crash investigation and bus post crash inspections.

Respondents: The respondents will be individuals involved in the selected bus crashes including the bus drivers, other drivers, passengers, witnesses and motor carrier officials.

Average Burden Per Response: 1 hour for non-bus company personnel and 2 hours for bus company drivers and representatives.

Estimated Total Annual Burden: The estimated total annual burden is 900 hours [(500 interviews × 1 hour per response) 500 hours + (200 interviews × 2 hours per response) 400 hours = 900 hours].

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; Public Law 106–159, 113 Stat. 1748 (December 9, 1999); and 49 CFR 1.73.

Issued on: November 4, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–2757 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–4334, FMCSA–2000–7165, FMCSA–2000–7363, FMCSA–2002–12844, FMCSA–2002–13411]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 28 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 4, 2005. Comments from interested persons should be submitted by March 16, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–98–4334, FMCSA–2000–7165, FMCSA–2000–7363, FMCSA–2002–12844, and FMCSA–2002–13411 by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. 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 Notices.

Docket: For access to the dockets 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: Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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 the Department of Transportation'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*.

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 28 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 28 applications for renewal on their merits and decided to extend each exemption for a renewable two year period. They are:

Michael D. Archibald, Howard K. Bradley, Kirk H. Braegger, Mark L. Braun, Gary Bryan, Daniel L. Butler, Ambrosio E. Calles, Adam D. Craig, Jose G. Cruz, Everett A. Doty, Donald K. Driscoll, Donald J. Goretski, David R. Gross, harry P. Henning, Wayne H. Holt, Bruce G. Hoemr, Christopher L. Humphries, Jimmy C. Killian, James A. Kneece, Ralph J. Miles, William R. New, George S. Rayson, Thomas C. Rylee, Stnaley B. Salkowski III, James A. Stoudt, Michael G. Thomas, William H. Twardus, Ronald J. Watt.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual

medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 28 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 67 FR 76439; 68 FR 10298; 65 FR 33406; 65 FR 77066; 67 FR 71610; 65 FR 57234; 67 FR 57266; 67 FR 67234; 65 FR 45817; 68 FR 1654; 67 FR 68719; 68 FR 2629). Each of these 28 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 16, 2005.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: February 7, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–2756 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2000–7363, FMCSA–2000–7918]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 17 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 7, 2005. Comments from interested persons should be submitted by March 16, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–2000–7363 and FMCSA–2000–7918 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. 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 Notices.

Docket: For access to the dockets 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: Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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 the Department of Transportation'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.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 17 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 17 applications for renewal on their merits and decided to extend each exemption for a renewable two year period. They are:

Henry Ammons, Jr., Larry N. Arrington, Robert D. Bonner, David S. Carman, Cedric E. Foster, Glen T. Garrabrant, John R. Hughes, Alan L. Johnston, Luther A. McKinney, Carl A. Michel, Sr., Dennis I. Nelson, Rance A. Powell, Shannon E. Rasmussen, James R. Rieck, Garfield A. Smith, Frederick E. St. John, Henry L. Walker.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 17 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 45817, 65 FR 77066, 68 FR 10300, 65 FR 66286, 66 FR 13825). Each of these 17 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 16, 2005.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: February 7, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–2758 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to lessoning the burden for individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Monday, March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, March 7, 2005, from 1 p.m. eastern time to 2 p.m. eastern time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: February 9, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–2813 Filed 2–11–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 8, 2005 from 2:30 p.m. to 3:30 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Tuesday, March 8, 2005 from 2:30 p.m. to 3:30 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: February 9, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–2814 Filed 2–11–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 2, 2005.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, March 2, 2005, from 1:45 p.m. Pacific Time to 3:15 p.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: February 9, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–2815 Filed 2–11–05; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 70, No. 29

Monday, February 14, 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 155

RIN 3038–AC16

Distribution of ''Risk Disclosure Statement'' by Futures Commission Merchants and Introducing Brokers

Correction

In rule document 05–1906 beginning on page 5923 the issue of Friday, February 4, 2005, make the following correction:

On page 5924, in the third column, in amendatory paragraph 3, the third line should read as follows, ''**Authority:** 7 U.S.C. 6b, 6c, 6g, 6j and 12a, unless otherwise noted.''

[FR Doc. C5–1906 Filed 2–11–05; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51114; File No. SR–Phlx–2005–07]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Extension of a Pilot Limiting Trade-Through Liability at the End of the Options Trading Session

January 31, 2005.

Correction

In notice document E5–467 beginning on page 6492 in the issue of Monday, February 7, 2005 make the following correction:

On page 6493, in the third column, in the first paragraph, in the last line, '' January 28, 2005'' should read ''February 28, 2005''.

[FR Doc. Z5–467 Filed 2–11–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
February 14, 2005

Part II

Department of Defense

Office of Personnel Management

5 CFR Chapter XCIX and Part 9901
National Security Personnel System; Proposed Rule

DEPARTMENT OF DEFENSE

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Chapter XCIX and Part 9901

RIN 3206–AK76/0790–AH82

National Security Personnel System

AGENCY: Department of Defense; Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) and the Office of Personnel Management (OPM) are issuing proposed regulations to establish the National Security Personnel System (NSPS), a human resources management system for the DoD, as authorized by the National Defense Authorization Act (Pub. L. 108–136, November 24, 2003). NSPS governs basic pay, staffing, classification, performance management, labor relations, adverse actions, and employee appeals. NSPS aligns DoD's human resources management system with the Department's critical mission requirements and protects the civil service rights of its employees.

DATES: Comments must be received on or before March 16, 2005.

ADDRESSES: You may submit comments, identified by docket number NSPS–2005–001 and/or Regulatory Information Number (RIN) 3206–AK76 or 0790–AH82. Please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. There are multiple methods for submitting comments. Please submit only one set of comments via one of the methods described.

Preferred Method for Comments: The preferred method for submitting comments is through the NSPS Web site at:

• *http://www.cpms.osd.mil/nsps.*

Alternative Methods: If you are unable to submit comments via the NSPS Web site, you may submit comments in one of the following ways.

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

• Mail to: Program Executive Office, National Security Personnel System, Attn: Bradley B. Bunn, 1400 Key Boulevard, Suite B–200, Arlington, VA 22209–5144.

• E-mail to: *nspscomments@cpms.osd.mil.* Please put the following in the subject line: ''Comments on Proposed NSPS Regulations—RIN 3206–AK76/0790–AH82.''

• Hand delivery/courier to: Program Executive Office, National Security Personnel System, Attn: Bradley B. Bunn, 1400 Key Boulevard, Suite B–200, Arlington, VA 22209–5144. Delivery must be made between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. Mailed or hand-delivered comments must be in paper form. No mailed or hand-delivered comments in electronic form (CDs, floppy disk, or other media) will be accepted. The official Web site (*http://www.cpms.osd.mil/nsps*) will contain any public comments received, without change, as DoD and OPM receive them, unless the comment contains security-sensitive material, confidential business information, or other information whose public disclosure is restricted by statute. If such material is received, we will provide a reference to that material in the version of the comment that is placed in the docket. The system is an ''anonymous access'' system, which means that DoD and OPM will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. Unless a comment is submitted anonymously, the names of all commenters will be public information.

Please ensure your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked ''late,'' and DoD and OPM are not required to consider them in formulating a final decision.

Before acting on this proposal, DoD and OPM will consider all comments we receive on or before the closing date for comments. Comments filed late will be considered only if it is possible to do so without incurring expense or delay. Changes to this proposal may be made in light of the comments we receive.

FOR FURTHER INFORMATION CONTACT: For DoD, Bradley B. Bunn, (703) 696–4664; for OPM, Ronald P. Sanders, (202) 606–6500.

SUPPLEMENTARY INFORMATION: The Department of Defense (DoD or ''the Department'') and the Office of Personnel Management (OPM) are proposing to establish the National Security Personnel System (NSPS), a human resources (HR) management system for DoD under 5 U.S.C. 9902, as enacted by section 1101 of the National Defense Authorization Act (Pub. L. 108–136, November 24, 2003). The following information is intended to provide interested parties with relevant background material about (1) the establishment of the National Security Personnel System, (2) the process used to design the NSPS, (3) a description of the proposed NSPS regulations, and (4) an analysis of the costs and benefits of those proposed regulations.

The Case for Action

''* * * a future force that is defined less by size and more by mobility and swiftness, one that is easier to deploy and sustain, one that relies more heavily on stealth, precision weaponry, and information technologies.''

With that statement on May 25, 2001, President Bush set a new direction for defense strategy and defense management—one toward transformation. On January 31, 2002, Secretary of Defense Donald Rumsfeld echoed the sentiments expressed by President Bush, stating that ''All the high-tech weapons in the world will not transform the U.S. armed forces unless we also transform the way we think, the way we train, the way we exercise, and the way we fight.''

Transformation *is* more than acquiring new equipment and embracing new technology—it is the process of working and managing creatively to achieve real results. To transform the way DoD achieves its mission, it must transform the way it leads and manages the people who develop, acquire, and maintain our Nation's defense capability. Those responsible for defense transformation—including DoD civilian employees—must anticipate the future and wherever possible help create it. The Department must seek to develop new capabilities to meet tomorrow's threats as well as those of today. NSPS is a key pillar in the Department of Defense's transformation—a new way to manage its civilian workforce. NSPS is essential to the Department's efforts to create an environment in which the total force, uniformed personnel and civilians, thinks and operates as one cohesive unit.

DoD civilians are unique in government: they are an integral part of an organization that has a military function. DoD civilians must complement and support the military around the world in every time zone, every day. Just as new threats, new missions, new technology, and new tactics are changing the work of the military, they are changing the work of our 700,000 civilians. To support the interests of the United States in today's national security environment—where unpredictability is the norm and greater

agility the imperative—civilians must be an integrated, flexible, and responsive part of the team.

At best, the current personnel system is based on 20th century assumptions about the nature of public service and cannot adequately address the 21st century national security environment. Although the current Federal personnel management system is based on important core principles, those principles are operationalized in an inflexible, one-size-fits-all system of defining work, hiring staff, managing people, assessing and rewarding performance, and advancing personnel. These inherent weaknesses make support of DoD's mission complex, costly, and ultimately, risky. Currently, pay and the movement of personnel are pegged to outdated, narrowly defined work definitions, hiring processes are cumbersome, high performers and low performers are paid alike, and the labor system encourages a dispute-oriented, adversarial relationship between management and labor. These systemic inefficiencies detract from the potential effectiveness of the total force. A more flexible, mission-driven system of human resources management that retains those core principles will provide a more cohesive total force. The Department's 20 years of experience with transformational personnel demonstration projects, covering nearly 30,000 DoD employees, has shown that fundamental change in personnel management has positive results on individual career growth and opportunities, workforce responsiveness, and innovation; all these things multiply mission effectiveness.

The immense challenges facing DoD today require a civilian workforce transformation: civilians are being asked to assume new and different responsibilities, take more risk, and be more innovative, agile, and accountable than ever before. It is critical that DoD supports the entire civilian workforce with modern systems; particularly a human resources management system that supports and protects their critical role in DoD's total force effectiveness. Public Law 108–136 provides the Department of Defense with the authority to meet this transformation challenge through development and deployment of the NSPS.

More specifically, the law provides the Department and OPM—in collaboration with employee representatives—authority to establish a flexible and contemporary system of civilian human resources management for DoD civilians. The attacks of September 11 made it clear that flexibility is not a policy preference. It is nothing less than an absolute requirement and it must become the foundation of DoD civilian human resources management.

NSPS is designed to promote a performance culture in which the performance and contributions of the DoD civilian workforce are more fully recognized and rewarded. The system will offer the civilian workforce a contemporary pay banding construct, which will include performance-based pay. As the Department moves away from the General Schedule system, it will become more competitive in setting salaries and it will be able to adjust salaries based on various factors, including labor market conditions, performance, and changes in duties. The HR management system will be the foundation for a leaner, more flexible support structure and will help attract skilled, talented, and motivated people, while also retaining and improving the skills of the existing workforce.

Despite the professionalism and dedication of DoD civilian employees, the limitations imposed by the current personnel system often prevent managers from using civilian employees effectively. The Department sometimes uses military personnel or contractors when civilian employees could have and should have been the right answer. The current system limits opportunities for civilians at a time when the role of DoD's civilian workforce is expanding to include more significant participation in total force effectiveness. NSPS will generate more opportunities for DoD civilians by easing the administrative burden routinely required by the current system and providing an incentive for managers to turn to them first when certain vital tasks need doing. This will free uniformed men and women to focus on matters unique to the military.

The law requires the Department to establish a contemporary and flexible system of human resources management. DoD and OPM are crafting NSPS through a collaborative process involving management, employees, and employee representatives, and are inviting comments from a broader community of other interested parties. DoD leadership will ensure that supervisors and employees understand the new system and can function effectively within it. The system will retain the core values of the civil service and allow employees to be paid and rewarded based on performance, innovation, and results. In addition, the system will provide employees with greater opportunities for career growth and mobility within the Department.

Relationship to the Department of Homeland Security

In developing the National Security Personnel System, the Department of Defense has benefited greatly from the efforts of the Department of Homeland Security (DHS). After more than 2 years of work, DHS and OPM have recently issued final regulations establishing Homeland Security's new human resources (HR) system, and the Secretary and the Director were extensively informed by the DHS experience, in terms of both process and results, in designing, developing, and drafting these proposed regulations. In this regard, the DHS regulations were analyzed by staff-level working groups, as well as senior leadership, and where it made sense—that is, where it was consistent with and supported DoD's national security mission, operations, and statutory authorities—we adopted many of the concepts and approaches, and even much of the specific language set forth in the DHS regulations. For example, both regulations provide flexibilities in pay, performance management, labor relations, adverse actions, and appeals, while preserving the important core merit principles required by law. Similarly, both regulations provide essential management flexibilities to respond to mission and operational exigencies. At the same time, where there are differences between DHS and DoD—in terms of scope, mission, organizational culture, and human capital challenges, as well as the statutes that authorize the respective HR systems—DoD and OPM have broken new ground, and these proposed regulations are intended to stand on their own in that regard. Accordingly, this proposed regulation should not be viewed (or judged) in comparison to DHS, but rather as an independent effort, informed by the DHS experience, yet focused on DoD's mission and requirements.

Authority To Establish a New HR System

The authority for NSPS is 5 U.S.C. 9902(a) through (h) and (k) through (m), which provide authority to establish a new human resources management system, appeals system, and labor relations system for the Department of Defense. NSPS allows the Department of Defense to establish a more flexible civilian personnel management system that is consistent with its overall human capital management strategy. NSPS will make the Department a more competitive and progressive employer at a time when the country's national security demands a highly responsive

civilian workforce. The NSPS is a transformation lever to enhance the Department's ability to execute its national security mission.

Subsection (a) of section 9902 provides that the Secretary of Defense may establish a human resources management system, known as the ''National Security Personnel System'' (NSPS), in regulations jointly prescribed with the Director of OPM. The system established under subsection (a) may differ from the traditional civil service system established under title 5, U.S. Code, in certain respects. It is also subject to certain requirements and limitations that are specified in subsections (b) through (h) and (l) of section 9902. For example, NSPS must be flexible, contemporary, and consistent with statutory merit system principles and prohibitions against prohibited personnel practices (in 5 U.S.C. 2301 and 2302, respectively). The system must ensure that employees may organize and bargain collectively, subject to the provisions of chapter 99 of title 5 and other statutory requirements. The system must include a performance management system that incorporates certain elements listed in the law. Also, in establishing the system, only certain provisions of title 5 may be waived or modified by DoD and OPM:

- Chapter 31, 33, and 35 (dealing with staffing, employment, and workforce shaping, as authorized by 5 U.S.C. 9902(k));
- Chapter 43 (dealing with performance appraisal systems);
- Chapter 51 (dealing with General Schedule job classification);
- Chapter 53 (dealing with pay for General Schedule employees, pay and job grading for Federal Wage System employees, and pay for certain other employees);
- Subchapter V of chapter 55 (dealing with premium pay), except section 5545b (dealing with firefighter pay);
- Chapter 75 (dealing with adverse actions); and
- Chapter 77 (dealing with appeal of adverse actions and certain other actions).

In planning, developing, implementing, and adjusting NSPS established under subsection (a), DoD and OPM must use procedures that provide employee representatives with an opportunity to participate and collaborate in the process. This collaboration requirement is set forth in subsection (f) and is further described later in this Supplementary Information. The law provides that the collaboration procedures in subsection (f) are the ''exclusive procedures'' for the participation of employee representatives, provided in lieu of any collective bargaining requirements.

Subsection (h) of section 9902 provides authority to establish an appeals process for DoD employees covered by NSPS. This process must ensure that all affected DoD employees are afforded the protection of due process. Subsection (h) authorizes new standards and procedures for personnel actions based on either misconduct or performance that fails to meet expectations. The procedures may include a revised process for hearing appeals of adverse actions. Finally, subsection (h) provides that an employee against whom an adverse action is taken may seek review of the record of the case by the Merit Systems Protection Board. The Board may dismiss cases that do not raise substantial questions of fact or law. The Board may only order corrective action if it determines that the DoD decision was—

- Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- Obtained without procedures required by law, rule or regulation having been followed; or
- Unsupported by substantial evidence.

Subsection (k) of section 9902 provides that, in establishing and implementing the NSPS under subsection (a), DoD and OPM are not limited by any provision of title 5 or implementing regulations relating to—

- The methods of establishing qualification requirements for, recruitment for, and appointments to positions;
- The methods of assigning, reassigning, detailing, transferring, or promoting employees; and
- The methods of reducing overall agency staff and grade levels, except that performance, veterans' preference, tenure of employment, length of service, and such other factors as the Secretary considers necessary and appropriate must be considered in decisions to realign or reorganize the Department's workforce.

Thus, subsection (k) authorizes the modification of chapters 31, 33, and 35 of title 5, U.S. Code (dealing with staffing, employment, and workforce shaping). However, in implementing subsection (k), DoD must comply with veterans' preference requirements in 5 U.S.C. 2302(b)(11).

Subsection (m) provides a separate authority (independent of subsection (a) and notwithstanding subsection (d)) for the Secretary of Defense and the Director of OPM to establish a DoD labor relations system Subsection (m) establishes collaboration requirements to give employee representatives the opportunity to participate in developing, implementing, and adjusting the labor relations system. Subsection (m) provides authority to modify chapter 71. By law, the subsection (m) authority may not be used to expand the scope of bargaining. Also, by law, the DoD labor relations system supersedes all collective bargaining agreements for covered DoD bargaining units, except as otherwise determined by the Secretary. Finally, the law provides that the DoD labor relations system established under subsection (m) will expire 6 years after the date of enactment (*i.e.*, November 24, 2009), unless extended by statute. If subsection (m) expires, the provisions of chapter 71 of title 5, U.S. Code, would again apply.

Subsections (i) and (j) in section 9902 establish separate authorities that are not held jointly with OPM and are not addressed in these proposed regulations.

Process

Leadership

In April 2004, senior DoD leadership approved the collaborative process that the Department is using to design and implement NSPS. This process was crafted over a period of about 3 weeks by a group of 25 to 30 senior experts representing various elements within DoD, OPM, and the Office of Management and Budget. The senior leaders used the Defense Acquisition Management model as a way to establish the requirements for the design and implementation of NSPS. The senior leaders recommended Guiding Principles and Key Performance Parameters (KPPs), which defined the minimum requirements for NSPS. They also recommended establishing a Senior Executive and Program Executive Office (PEO), modeled after the Department's acquisition process. Subsequently, the Honorable Gordon England, was appointed by the Secretary of Defense as the NSPS Senior Executive, in addition to his duties as Secretary of the Navy, to design, develop, establish, implement, and adjust the NSPS on his behalf. As the NSPS Senior Executive, Secretary England established the NSPS PEO as the central DoD policy and program office to conduct the design, planning and development, deployment, assessment, and full implementation of NSPS. The PEO provides direction to and oversight of the Component program managers who

are dual-hatted under their parent Component and the PEO.

At OPM, the Director designated the Senior Advisor on the Department of Defense to lead agency activities in the joint development of the NSPS. The Director received frequent and regular briefings on the progress of NSPS and on the status of key policy options across the spectrum of authorities granted in the NSPS statute. Subsequently, in periodic reviews the Director exercised policy options, thereby providing guidance to the OPM team. Policy and regulatory development for NSPS are specifically vested in the Division for Strategic Human Resources Policy, and OPM's work teams and leadership cadres were drawn largely from this Division. In addition, a Senior Level Review Group reviewed NSPS decision documents to ensure consistency with the Director's priorities.

An integrated executive management team composed of senior DoD and OPM leaders provides overall policy and strategic advice to the PEO and serves as staff to the Senior Executive. The PEO meets with and consults with this team, the Overarching Integrated Product Team (OIPT), 8 to 10 times a month. The Senior Executive convenes meetings with the PEO and OIPT at least twice a month to monitor and direct the process.

Guiding Principles and Key Performance Parameters

In setting up the process for the design of the system, senior leadership adopted a set of Guiding Principles as a compass to direct efforts throughout all phases of NSPS development. They translate and communicate the broad requirements and priorities outlined in the legislation into concise, understandable requirements that underscore the Department's purpose and intent in creating NSPS. The Guiding Principles are:

- Put mission first—support National Security goals and strategic objectives;
- Respect the individual—protect rights guaranteed by law;
- Value talent, performance, leadership and commitment to public service;
- Be flexible, understandable, credible, responsive, and executable;
- Ensure accountability at all levels;
- Balance HR interoperability with unique mission requirements; and
- Be competitive and cost effective.

In addition, senior leadership approved a set of Key Performance Parameters (KPPs), which define the minimum requirements and/or attributes of the system. Those KPPs are summarized below:

- High Performing: Employees/supervisors are compensated/retained based on performance/contribution to mission;
- Agile and Responsive: Workforce can be easily sized, shaped, and deployed to meet changing mission requirements;
- Credible and Trusted: System assures openness, clarity, accountability and merit principles;
- Fiscally Sound: Aggregate increases in civilian payroll, at the appropriations level, will conform to OMB fiscal guidance, and managers will have flexibility to manage to budget;
- Supporting Infrastructure: Information technology support and training and change management plans are available and funded; and
- Schedule: NSPS will be operational and demonstrate success prior to November 2009.

Working Groups

In July 2004, the PEO established Working Groups to begin the NSPS design process. Over 120 employees representing the Military Departments (Army, Navy, Air Force), the other DoD Components, and OPM began the process of identifying and developing options and alternatives for consideration in the design of NSPS. The Working Group members included representatives from the DoD human resources community, DoD military and civilian line managers, representatives from OPM, the legal community, and subject matter experts in equal employment opportunity, information technology, and financial management. In addition, other subject matter experts participated.

The Working Groups were functionally aligned to cover the following human resources program areas: (1) Compensation (classification and pay banding); (2) performance management; (3) hiring, assignment, pay setting, and workforce shaping; (4) employee engagement; (5) adverse action and appeals; and (6) labor relations. Each group was co-chaired by an OPM and DoD subject matter expert. The Working Groups' review and analysis included a compilation of pertinent laws, rules, regulations, and other related documents that were forwarded to them for advance preparation. Working Groups were also provided with available information and input from NSPS focus groups and town hall sessions held at strategic locations worldwide, union consultation meetings, data review and analysis from alternative personnel systems and laboratory and acquisition demonstration projects, the NSPS statute, Guiding Principles, as well as a review of earlier studies and working groups. In addition, subject matter experts briefed the Working Groups on a variety of topics, such as pay-for-performance systems, alternative personnel systems, pay pool management, and market sensitive compensation systems.

Option Development Process

In developing options for the NSPS, the Working Groups benefited from the Government's experience under demonstration project authorities and alternative personnel systems, the DoD ''Best Practices'' initiative (68 FR 16120, April 2, 2003), and the compilation of research materials from the Department of Homeland Security HR Systems Design process. The Working Groups also received and considered input from employees and their representatives. The resulting product was a set of options that covered a broad range of variations on the six areas of focus. Each option was evaluated against the Guiding Principles and Key Performance Parameters (KPPs).

To ensure that the options reflected the wide range of views and concerns expressed by various entities, the NSPS Working Groups did not attempt to reach consensus regarding the merits of the options. Consequently, none of the options necessarily represented a consensus view of the Working Groups. Some of the options integrate approaches to developing new HR systems across two or more of the six subject matter areas under consideration. This is especially true of the compensation architecture and pay-for-performance options, which were intended to illustrate how various classification, compensation, and performance system elements might work in combination. The performance and compensation/classification options also tended to cluster around several distinct themes, such as ''function/occupation-focused,'' ''performance-focused,'' and ''contribution/ mission-focused.'' The initial draft options were reviewed by the PEO and Senior Advisory Group (SAG) to capture feedback prior to finalizing them for submission to the Overarching Integrated Product Team (OIPT) for review.

Outreach

A comprehensive outreach and communications strategy is essential for designing and implementing a new HR system. Outreach facilitates employee awareness and understanding of NSPS;

it's the primary strategy for sharing the NSPS vision. In April 2004, the PEO developed and implemented a communications strategy. The objectives of DoD's communications strategy are to (1) demonstrate the rationale for and benefits of NSPS; (2) demonstrate openness and transparency in the design and process of converting to NSPS; (3) express DoD's commitment to ensuring NSPS is applied fairly and equitably; and (4) address potential criticism of NSPS.

The PEO identified channels for disseminating relevant, timely, and consistent information, including a wide variety of print and electronic media, e-mail, town hall meetings, focus groups, speeches, and briefings, and developed an action plan for communicating with each stakeholder. The PEO also developed key messages to include in stakeholder communications to reinforce the Guiding Principles of the NSPS HR systems design process. A website was developed and launched to serve as a primary, two-way communications tool for the workforce, other stakeholders, and the general public. PEO updates the website regularly with new information concerning the design, development, and implementation of NSPS. Further, the website includes the capability for visitors to submit questions and comments. To date, PEO has responded to thousands of questions and comments.

Outreach to Employee Representatives

Beginning in the spring of 2004 and continuing over the course of several months, the PEO sponsored a series of meetings with union leadership to discuss design elements of NSPS. Officials from DoD and OPM met throughout the summer and fall with union officials representing many of the DoD civilians who are bargaining unit employees. These sessions provided the opportunity to discuss the design elements, options, and proposals under consideration for NSPS and solicit union feedback.

To date, DoD and OPM have conducted 10 joint meetings with officials of the 41 unions that represent DoD employees, including the 9 unions that currently have national consultation rights. These union officials represent some 1,500 separate bargaining units covering about 445,000 employees. These meetings involved as many as 80 union leaders from the national and local level at any one time, and addressed a variety of topics, including: the reasons change is needed and the Department's interests; the results of Department-wide focus group sessions held with a broad cross-section of DoD employees; the proposed NSPS implementation schedule; employee communications; and proposed design options in the areas of labor relations and collective bargaining, adverse actions and appeals, and pay and performance management.

Outreach to Employees

In keeping with DoD's commitment to provide employees and managers an opportunity to participate in the development of NSPS, the PEO sponsored a number of Focus Group sessions and town hall meetings at various sites across DoD. Focus Group sessions began in mid-July 2004, and continued for approximately 3 weeks. A total of 106 focus groups were held throughout DoD, including overseas locations. Separate focus groups were held for employees, civilian and military supervisors, and managers and practitioners from HR, legal and EEO communities. Bargaining unit employees and union leaders were invited to participate. Each focus group was conducted by a trained facilitator. For the major system design elements, focus group participants were asked what they thought worked well in the current HR systems and what they thought should be changed. Over 10,000 comments, ideas and suggestions received during the Focus Group sessions were summarized and provided to NSPS Working Groups for use in developing options for the labor relations, appeals, adverse actions, and human resources design elements of NSPS.

In addition, town hall meetings were held in DoD facilities around the world during the summer of 2004, providing an opportunity to communicate with the workforce, provide the status of the design and development of NSPS, and solicit thoughts and ideas. The NSPS Senior Executive, Secretary Gordon England, conducted the first town hall meeting at the Pentagon on July 7, 2004. The format for town hall meetings included an introductory presentation by a senior leader followed by a question and answer session where anyone in the audience was free to ask a question or make a comment. Some of the town hall meetings were broadcast live, as well as videotaped and rebroadcast on military television channels and Web sites to facilitate the widest possible dissemination.

The focus group sessions and town hall meetings, as well as the Working Groups and union consultation sessions, underscore the Department's commitment to ensuring an open, transparent design process. The sessions assured that civilian employees, managers, supervisors, union leadership, and other key stakeholders were involved in the design and implementation of NSPS and had ample opportunity to provide input.

Outreach to Other Stakeholders

In addition to reaching out to DoD employees and labor organizations, DoD and OPM met with other groups who were thought to be interested in the design of a new HR system for DoD. DoD and OPM invited selected stakeholders to participate in briefings held at OPM in August and September 2004.

The first stakeholder briefing was for public interest groups, such as the National Association of Public Administrators (NAPA), Coalition for Effective Change, and Partnership for Public Service. The second stakeholder briefing was for veterans' service organizations. A third stakeholder briefing was conducted with non-union employee advocacy groups. Attendees at all three briefings received background information about NSPS, an update on the PEO work plan, an overview of the NSPS Guiding Principles, and updates on the activities of the team, including town hall meetings and focus groups. Attendees were afforded an opportunity to participate in a question-and-answer session following these presentations.

Both before and after these three stakeholder briefings, DoD and OPM responded to dozens of requests for special briefings. DoD and OPM also met with the Government Accountability Office, Office of Management and Budget, and Department of Homeland Security to keep them up to date on the team's activities.

General Provisions—Subpart A

Subpart A of the proposed regulations provides the purpose and the establishment of the general provisions governing coverage under the new DoD HR system, and defines terms that are used throughout the new part 9901. Part 9901 applies to employees in DoD organizational and functional units identified under the regulations as eligible for coverage and who are approved for coverage, as of a specified date, by the Secretary of Defense. This enables DoD to phase in coverage of particular groups of employees or Components of the Department. Subpart A also allows DoD to prescribe internal Departmental issuances that further define the design characteristics of the new HR system. (*See* the ''Next Steps'' section at the end of this **SUPPLEMENTARY INFORMATION**.) Finally,

subpart A clarifies the relationship of the regulations in part 9901 to other provisions of law and regulations outside those that are being waived with respect to DoD.

Purpose

The purpose of the proposed regulations is to establish a system designed to meet the statutory requirements, the NSPS KPPs and Guiding Principles.

Eligibility and Coverage

All DoD employees currently covered by the classification and pay systems established under chapter 51 or 53 of title 5, U.S. Code, are eligible for coverage under one or more of subparts B through I of this part, except to the extent specifically prohibited by law (*e.g.*, Executive Schedule officials, who, by law, remain covered by subchapter II of chapter 53). DoD will transition to the NSPS human resources system beginning with its General Schedule (GS) employees (and equivalent). Other categories of employees, including those covered by other systems outside of title 5, will be phased in as appropriate. SES members and certain other similar types of DoD employees will be eligible for coverage under the new DoD pay system. However, the proposed regulations provide that any new pay system covering SES members must be consistent with the performance-based features of the new Governmentwide SES pay-for-performance system authorized by section 1125 of the National Defense Authorization Act (Pub. L. 108–136, November 24, 2003). If DoD wishes to establish an SES pay system that varies substantially from the new Governmentwide SES pay-for-performance system, DoD and OPM will issue joint authorizing regulations consistent with all of the requirements of the National Security Personnel System, as set forth in 5 U.S.C. 9902. In addition, DoD and OPM will involve SES members and other interested parties in the design and implementation of any new pay system for SES members employed by DoD.

Scope of Authority

Subject to the requirements and limitations in 5 U.S.C. 9902, the provisions in the following chapters of title 5, U.S. Code, and any related regulations, may be waived or modified:

- The rules governing staffing, employment, and workforce shaping (as permitted by 5 U.S.C. 9902(k)) established under chapters 31, 33, and 35;
- The rules governing performance appraisal systems established under chapter 43;
- The General Schedule classification system established under chapter 51;
- The pay systems for General Schedule employees, pay and job grading for Federal Wage System employees, and pay for certain other employees, as set forth in chapter 53;
- The premium pay system for employees, as set forth in chapter 55, subsection V, except section 5545(b) relating to pay for firefighters;
- The labor relations system (as authorized by 5 U.S.C. 9902(m)) established under chapter 71;
- The rules governing adverse actions and certain other actions taken under chapter 75; and
- The rules governing the appeal of adverse actions and certain other actions under chapter 77.

Coordination Between DoD and OPM

In implementing the intent of Congress that the Secretary and the Director jointly prescribe regulations for NSPS, DoD and OPM recognize that both agencies have significant legitimate interests that must be taken into account. DoD requires an agile and responsive civilian personnel system to support its Total Force and execute its national security mission. At the same time, OPM is responsible for providing guidance and assistance to DoD in developing a new human resources management system while simultaneously protecting Governmentwide institutional interests regarding the civil service system.

Section 9901.105 of the proposed regulations provides that the Secretary will advise and/or coordinate with OPM in advance, as applicable, regarding the proposed promulgation of certain DoD implementing issuances and certain other actions related to the ongoing operation of the NSPS where such actions could have a significant impact on other Federal agencies and the Federal civil service as a whole. The Secretary and the Director fully expect their staffs to work closely together on the matters specified in this section, before such matters are submitted for official OPM coordination and DoD decision, so as to maximize the opportunity for consensus and agreement before an issue is so submitted.

When a matter requiring OPM coordination pursuant to the coordination requirements established in these regulations, is to be submitted to the Secretary for decision, the Director will be provided an opportunity, as part of the Department's normal coordination process, to review and comment on the recommendations and officially concur or nonconcur with all or part of them. The Secretary will take the Director's comments and concurrence/nonconcurrence into account, advise the Director of his or her determination, and provide the Director with reasonable advance notice of its effective date. Thereafter, the Secretary and the Director may take such action(s) as they deem appropriate, consistent with their respective statutory authorities and responsibilities.

Continuing Collaboration

The NSPS law requires that the implementation of a new HR system for DoD will be carried out with the participation of, and in collaboration with, employee representatives. The law spells out the specific process for involvement of employee representatives in the establishment of the system, known generally as the ''30/30/30'' process. These proposed regulations will be subject to that statutory process, which includes a comment period of 30 days, a minimum of 30 days for DoD and OPM to ''meet and confer'' with employee representatives on their recommendations, and a final 30 days for congressional notification prior to implementation.

The NSPS law also provides that the Secretary and the Director develop a process to involve employee representatives in the further planning, development, and/or adjustment of the system. To that end, § 9901.106 establishes a process by which employee representatives will be provided an opportunity to review, comment, and participate in discussions regarding proposals for further adjustments to the system, including DoD implementing issuances. This process is called ''continuing collaboration'' and is a separate and distinct process from the provisions found in subpart I, Labor-Management Relations. While the proposed NSPS regulations establish the overall NSPS human resources management system, there are several areas that will require DoD to promulgate implementing directives, instructions, manuals, and other issuances that provide the detailed procedures needed to implement the system. For example, the proposed regulations provide for an administrative process in which employees may seek reconsideration of their performance ratings; this is to ensure transparency in the performance management system. The specific procedures for that reconsideration process are not spelled out in these

proposed regulations; rather, they will be established in internal DoD issuances. In order to ensure that the views and concerns of employee representatives are considered in the development of those procedures, DoD will engage in the ''continuing collaboration'' process.

Under continuing collaboration, employee representatives (for those employees affected by the proposed issuance) will be provided a draft proposal and given a timeframe to review and submit written comments on the proposal, and they will be afforded the opportunity to discuss their views and concerns with DoD officials prior to finalization of the issuance. At the Secretary's discretion, this collaboration may also be initiated prior to the drafting of proposed issuances (*e.g.*, at the conceptual stage of the process). The proposed regulations guarantee that any written comments submitted within the timeframes will become part of the official record and be considered before final decisions are made. While this process does not affect the right of the Secretary to make the final determination as to the content of implementing issuances, it offers the opportunity for employee representatives to participate meaningfully in the process and influence the further development and refinement of NSPS.

Relationship to Other Provisions of the Law

Paragraph (a)(2) of § 9901.107 establishes a rule of construction requiring all provisions of this part be interpreted in a way that recognizes the critical national security mission of the Department. Each provision must be construed to promote the swift, flexible, and effective day-to-day accomplishment of that mission, as defined by the Secretary. DoD's and OPM's interpretation of these regulations must be accorded great deference.

Paragraph (b) of § 9901.107 describes the relationship between the proposed part 9901 and laws that are not waivable or modifiable under the NSPS law. For the purpose of applying other provisions of law or Governmentwide regulations that reference provisions under the waivable or modifiable chapters (*i.e.*, chapters 31, 33, 35, 43, 51, 53, 55 (subchapter V only), 71, 75, and 77 of title 5, U.S. Code), the referenced provisions are not waived but are modified consistent with the corresponding regulations in part 9901, except as otherwise provided in that part or in DoD implementing issuances. For example, physicians' comparability allowances under 5 U.S.C. 5948 are limited to physicians in certain listed pay systems, including the General Schedule. To ensure that DoD physicians continue to be eligible for physicians' comparability allowances when they convert from the General Schedule to the NSPS pay system, they will be deemed to be covered by the General Schedule for the purpose of applying section 5948. In addition, in applying the back pay law in 5 U.S.C. 5596 to DoD employees covered by subpart H of these proposed regulations (dealing with appeals), the reference in section 5596(b)(1)(A)(ii) to 5 U.S.C. 7701(g) (dealing with attorney fees) is considered to be a reference to a modified section 7701(g) that is consistent with § 9901.807(h).

Classification—Subpart B

Subpart B provides DoD with the authority to replace the current GS and FWS classification and qualifications systems and other current classification systems with a new method of evaluating and classifying jobs by grouping them into occupational categories and levels of work for pay and other related purposes. Under this new system, DoD (in coordination with OPM) will have the authority to establish qualifications for positions and to assign occupations and positions to broad occupational career groups and pay bands (or levels).

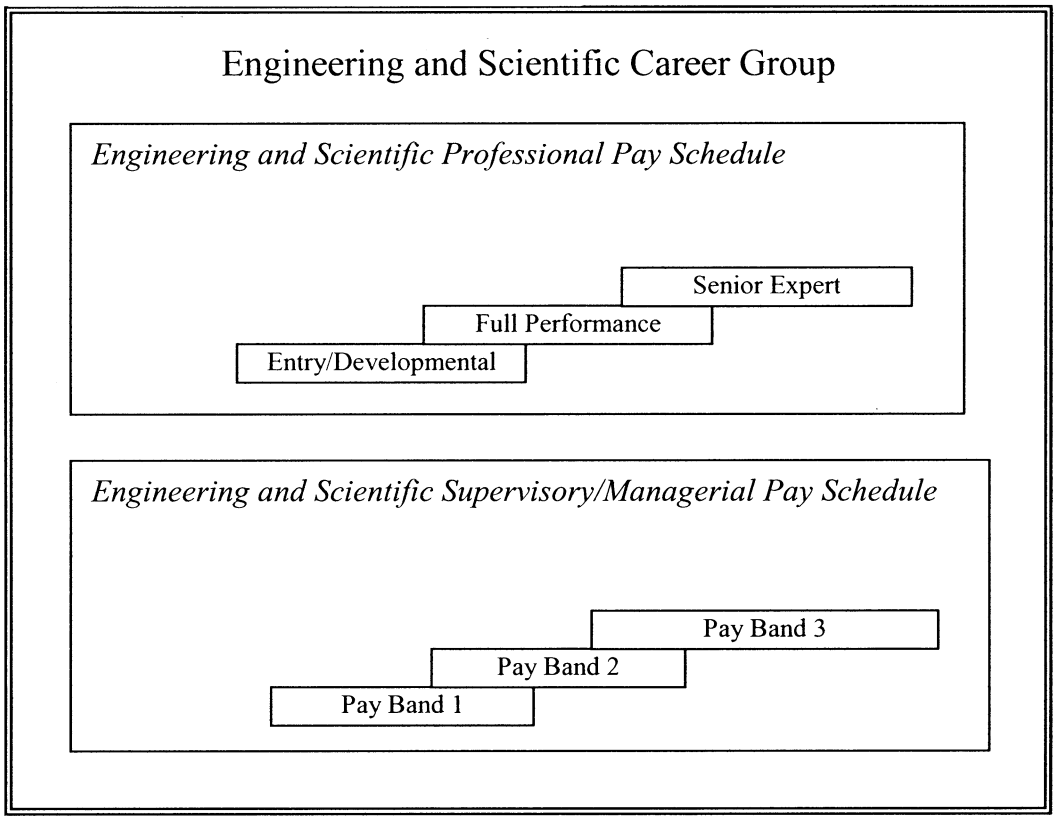
DoD (in coordination with OPM) will establish broad occupational career groups by grouping occupations and positions that are similar in types of work, mission, developmental/career paths, and/or competencies. The occupational career groups will serve as the basic framework for the NSPS classification and pay system. Within career groups, DoD may establish pay schedules that apply to subgroupings of related occupations. Within each pay schedule, DoD (in coordination with OPM) will establish broad salary ranges, commonly referred to as pay bands. The pay bands within a pay schedule represent progressively higher levels of work with correspondingly higher pay ranges.

DoD may elect to phase in the coverage of specific categories of employees or occupations under the new classification and pay system established under these proposed regulations. DoD may use OPM-approved occupational series and titles to identify and assign positions to a particular career group and pay schedule. Pay schedules typically will include most or all of the following levels of work:

- Entry/developmental work that involves a combination of formal training and/or on-the-job experience designed to provide the employee with the competencies needed to perform successfully at the full performance level.
- Work that involves nonsupervisory duties and responsibilities at the full performance level of the occupation.
- Nonsupervisory expert work that involves a high level of specialized knowledge or technical expertise clearly beyond the requirements for work at the full performance level upon which the employing organization relies for the accomplishment of critical mission goals and objectives.
- Work that involves the supervision of employees at the full performance or expert level.
- Managerial work whose primary purpose is to direct key DoD/Component scientific, medical, legal, administrative, or other programs.

Career groups, pay schedules, and pay bands provide clearly defined career paths for occupations. Table 1 illustrates the career group structure concept.

Table 1 – Sample Classification Structure



The new classification system for DoD will result in a streamlined method of classifying positions that no longer relies on lengthy classification standards and position descriptions. The new system does not require artificial distinctions between closely related levels of work, as currently required under the GS and Federal Wage System (FWS) classification systems. This more fully supports the merit system principle that ''equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition * * * for excellence in performance.'' Employees will be permitted to request reconsideration of the classification (career group, pay schedule, occupational series, or pay band) of their official positions of record at any time with DoD and/or OPM, as they can today under the GS system. The system described here, together with the new pay system described below, will provide DoD with greater flexibility to adapt the Department's job and pay structure to meet present and future mission requirements.

Pay and Pay Administration—Subpart C

This subpart contains proposed regulations establishing pay structures and pay administration rules for covered DoD employees to replace the pay structures and pay administration rules established under 5 U.S.C. chapter 53 and 5 U.S.C. chapter 55, subchapter V. This new system links pay to employees' performance ratings and is designed to promote a high-performance culture within DoD.

National Security Compensation Comparability

In accordance with the NSPS law, to the maximum extent practicable, for fiscal years 2004 through 2008, the aggregate amount allocated for compensation of DoD civilian employees under NSPS will not be less than if they had not been converted to the NSPS. This takes into account potential step increases and rates of promotion had employees remained in their previous pay schedule.

In addition, NSPS implementing issuances will provide a formula for calculating the aggregate compensation amount, for fiscal years after fiscal year 2008. The formula will ensure that, to the maximum extent practicable, in the aggregate, employees are not disadvantaged in the overall amount of pay available as a result of conversion to the NSPS, while providing flexibility to accommodate changes in the function of the organization, changes in the mix of employees performing those functions, and other changed circumstances that might impact pay levels.

Setting and Adjusting Rate Ranges

Setting Rate Ranges and Local Market Supplements: The proposed regulations establish a pay system that governs the setting and adjusting of covered employees' rates of pay. The system will have a rate range, with a minimum and maximum rate, for each band in each career group based on factors such as labor market rates, recruitment and retention information, mission requirements, operational needs, and overall budgetary constraints. The bands will have open pay ranges, with no fixed step rates. DoD will also set local market supplements (a supplement to basic pay in lieu of locality pay) for rate ranges based on geographic and occupational factors. DoD will coordinate setting and adjusting rate ranges and local market supplements with OPM.

Adjusting Rate Ranges and Local Market Supplements: DoD will

determine the rate range adjustments and local market supplements considering mission requirements, labor market conditions, availability of funds, pay adjustments received by employees in other Federal agencies, allowances and differentials under 5 U.S.C. chapter 59, and other relevant factors. Rate range adjustments and local market supplements may differ by career group, pay schedule, or pay band. The minimum and maximum of a range may be adjusted at different rates. DoD may determine local market areas as well as the timing of these pay adjustments.

The proposed regulations provide that employees may receive pay adjustments as a result of a rate range adjustment. Generally, employees will receive an adjustment equal to any increase to the minimum rate of their band and will receive any applicable local market supplement. In keeping with the desire of the Secretary and the Director to achieve and sustain a culture of high performance, the proposed regulations provide that these pay adjustments will not be provided to employees with an unacceptable performance rating.

Performance-Based Pay

The NSPS pay system will be a performance-based pay system that will result in a distribution of pay raises and bonuses based upon individual performance, individual contribution, organizational performance, team performance, or a combination of those elements. The NSPS system will use pay pools to manage, control, and distribute performance-based pay increases and bonuses. Under the proposed regulations, the term ''pay pool'' means the organizational elements/units or other categories of employees that are combined for the purpose of determining performance payouts or the dollar value of the funds set aside for performance payouts for employees covered by a pay pool. The performance payout is a function of the amount of money in the performance pay pool and the number of shares assigned to individual employees.

Annual Performance-based Payouts: Employees will receive annual performance-based payouts based on their rating of record and assigned shares. Each rating level will have a share or range of shares associated with it.

Rating Methodology: DoD implementing issuances will define the specific methodologies and practices that will be used in the Department. DoD expects to use a methodology that includes at least three rating levels and identifies a range of performance shares that can be assigned for rating levels. An example of a possible rating methodology is provided by Table 2. This example illustrates a five-level rating methodology with associated share ranges in which level five signifies the highest level of performance. The rater will prepare and recommend the rating, number of shares, and the distribution of the payout between basic pay increase and bonus, as applicable, for each employee. These recommendations will then be reviewed by the pay pool panel to ensure equitable rating criteria and methodology have been applied to all pay pool employees. The final determination of the rating, number of shares, and payout distribution will be a function of the pay pool panel process and will be approved by the pay pool manager. The criteria used to determine the number of shares to assign an employee may include assessment of the employee's contribution to the mission, the employee's type and level of work, consideration of specific achievements, or other job-related significant accomplishments or contributions.

TABLE 2.—SAMPLE RATING METHODOLOGY

Rating level	Share range
5	6–8
4	3–6
3	1–2
2	0
1	N/A

Performance Pay Pools: Performance pay pools will be established by combining organizational elements, functional groupings, or other categories of employees. Distinctions may also be made using criteria such as location or mission. Each pay pool will be managed by a pay pool manager in concert with appropriate management officials. The pay pool manager is the individual charged with the overall responsibility for rating determinations and distribution of the payout funds in a given pay pool. The funding of a performance pay pool consists of the money allocated for performance-based payouts for a defined group of employees. The amount of money available within a pay pool is normally based on the money that would have been available for within-grade increases, quality step increases, promotions between grades that have been banded in the NSPS pay system, and applicable across-the-board pay increases. Funds previously used for end-of-rating cycle performance awards or incentive awards may also be used to fund the pay pool. Note that the provisions of 5 U.S.C. chapter 45, ''Incentive Awards,'' remain in place and provide a valuable means to recognize employee achievements throughout the rating cycle.

Performance Payout: The performance payout is composed of an increase to basic pay, a bonus, or a combination of these. A bonus is a one-time lump-sum payment that is not paid as basic pay. Subject to DoD guidelines, pay pool managers will have the discretion to determine the proportion of an employee's total performance payout paid as an increase to basic pay or as a bonus. Increases to basic pay may not cause the basic pay of an employee to exceed the maximum of his or her pay band. In such situations, the amount of the payout that exceeds the maximum of the pay band will be paid in the form of a bonus.

Example: If the maximum of a pay band is $30,000, and an employee earning $28,750 is awarded a payout of $3,000, then the employee may receive an increase in basic pay of not more than $1,250 ($28,750 + $1,250 = $30,000) with the remainder (at least $1,750) paid as a bonus.

In addition, the proposed regulations allow DoD to establish ''control points'' or other mechanisms within a band, beyond which basic pay increases may be granted only for meeting criteria established by DoD. An example of such a control point is a requirement for the employee to have achieved the highest performance rating.

Other Performance Payouts: Extraordinary pay increases (EPI), organizational achievement recognition, or other special payments may be paid to employees in accordance with implementing issuances. The amount of such payments may not cause the employee's basic pay to exceed the maximum rate of the employee's assigned pay band.

- *Extraordinary Pay Increase:* An extraordinary pay increase (EPI) is a basic pay increase to reward employees when the payout formula does not adequately compensate them for their extraordinary performance. It is to be used sparingly and only to reward exceptionally high-performing employees whose performance and contributions to the organization are of an exceedingly high value. The performance must be expected to continue at an extraordinarily high level in the future.
- *Organizational Achievement Recognition:* This type of recognition may take the form of additional compensation paid to employees of a team, unit, branch, or organization

whose performance and contributions have successfully and directly advanced organizational goal(s).

Developmental Positions: Employees in developmental positions may receive pay adjustments as they acquire the competencies, skills, and knowledge necessary to advance to the full performance level.

Pay Administration

The new DoD pay system provides the Department with an enhanced ability to establish and adjust overall pay levels in keeping with changes in national and local labor markets. It is designed to adjust individual pay levels based on the acquisition and assessment of competencies, skills, and knowledge and on the basis of performance or contributions to mission. The new system is capable of adapting to changing circumstances and mission requirements.

Initial Conversion: Upon implementation of the new system, employees will be converted based on their official position of record. Initial entry into NSPS will ensure that each employee is placed in the appropriate pay band without loss of pay.

New Appointments/Reinstatements: When an employee is newly appointed or reinstated to a position in NSPS, management may establish pay at any rate up to the maximum of the pay band in accordance with implementing issuances. The hiring official will determine starting pay based on available labor market considerations; specific qualification requirements; scarcity of qualified applicants; program needs; education or experience of the candidate; and other criteria as appropriate. When an employee moves to a pay band with a higher earning potential, pay will be set in accordance with implementing issuances.

Temporary Promotion: Employees on temporary promotions will be returned to their official position of record prior to conversion. GS employees will be converted at their current rate of basic pay, including any locality payment, adjusted on a one-time, pro-rata basis, for the time spent towards their next within-grade increase.

Career-ladder Positions: Employees in career-ladder positions below the full performance level will be placed in the appropriate career group, pay schedule, and entry or developmental band.

Promotion: Promotion pay increases (from a lower band to a higher band in the same cluster or to a higher band in a different cluster) generally will be a fixed percent of the employee's rate of basic pay or the amount necessary to reach the minimum rate of the higher band, whichever is greater. This amount is roughly equivalent to the value of a promotion to a higher grade within the GS system.

Reassignment: An employee who moves to a position in a comparable pay band will have pay set depending on whether the move is voluntary or involuntary as a result of unacceptable performance and/or conduct. If the move is voluntary or involuntary and not due to unacceptable performance and/or conduct, pay will generally be set at the existing rate of pay; however, pay may be set at a higher rate within limitations specified in DoD implementing issuances. If the move is involuntary due to unacceptable performance and/or conduct, there may be a reduction in basic pay of up to 10 percent as provided in these proposed regulations and in DoD implementing issuances. Pay may not be set lower than the minimum of the pay band level or exceed the maximum of the pay band level.

Reduction in Band: When an employee moves to a lower pay band, pay will be set depending on whether the move is voluntary or involuntary. If the move is voluntary, pay may generally be set anywhere within the pay band within limits specified in the implementing issuances. If the move is involuntary due to an adverse action based on unacceptable performance and/or conduct, there may be a reduction in basic pay within the limits specified in these proposed regulations and in DoD implementing issuances (not to exceed 10 percent, unless a larger reduction is needed to place the employee at the maximum rate of the lower band). For other involuntary moves, any reduction in pay will be limited in accordance with DoD implementing issuances. Where pay retention is applicable (*e.g.*, following a reduction in force), the employee's pay will be protected under conditions and parameters to be identified in the implementing issuances.

Premium Pay

Section 9901.361 of the proposed regulations addresses DoD's authority to waive and replace the premium pay provisions in 5 U.S.C. chapter 55, subchapter V (except section 5545b), in whole or in part for employees in a category approved by the Secretary. DoD (in coordination with OPM) will establish any NSPS premium payments through implementing issuances.

Performance Management—Subpart D

The current performance management system is burdensome because of its actual and/or perceived inflexibility and strict adherence to written elements and standards established at the beginning of a rating cycle. Supervisors feel restricted in making any mid-course corrections or modifications to a performance plan, resulting in a final assessment that does not meet their needs. These static standards make it difficult for managers to adjust performance requirements and expectations in response to the Department's rapidly changing work environment, hold individual employees accountable for those general and/or assignment-specific work requirements and expectations, and make meaningful distinctions in employee performance as they accomplish those assignments. The proposed regulations are designed to address these deficiencies.

DoD has decided to waive the provisions of chapter 43 of title 5, U.S. Code, in order to design a performance management system that will complement and support the Department's proposed performance-based pay system described above. The proposed system will also ensure greater employee and supervisor accountability with respect to individual performance expectations, as well as organizational results.

The proposed system builds in the flexibility to modify, amend, and change performance and behavioral expectations during the course of a performance year, subject to employees being advised of, and involved in to the maximum feasible extent, the adjusted expectations. For example, supervisors have the option of establishing and communicating performance expectations during the course of the appraisal period through specific work assignments or other means. These other means may include standard operating procedures, organizational directives, manuals, and other generally established job requirements that apply to employees in a particular occupation and/or unit.

Coverage

Generally, DoD employees who are currently covered by chapter 43 of title 5, U.S. Code, are eligible for coverage under the new performance management provisions in subpart D of the proposed regulations. Employees who are currently excluded by chapter 43 of title 5, such as administrative law judges and presidential appointees, will not be eligible for coverage. Certain categories of employees are currently excluded from chapter 43 by OPM administrative action, as authorized by 5 CFR 430.202(d). Such employees are eligible for coverage under the new DoD

performance management provisions. DoD will decide which of those categories of otherwise eligible employees are covered by the Department's new performance management system or systems. The proposed regulations also allow DoD to develop, implement, and administer systems tailored to specific organizations and/or categories of employees.

Performance and Behavior Accountability

Typically, poor behavior or misconduct has been addressed only through the disciplinary process. Little attention has been paid to the impact of behavior, good or bad, on performance outcomes of the employee and the organization. DoD has determined that conduct and behavior affecting performance outcomes (actions, attitude, manner of completion, and/or conduct or professional demeanor) should be a tracked and measured aspect of an employee's performance. The NSPS regulations provide for consideration of employee behavior as a performance factor, element, or objective, such as ''teamwork/cooperation.''

When an employee's behavior enhances or impairs task/job accomplishment, it should affect the employee's performance appraisal. Behavior that significantly enhances the mission should also be noted. This does not change a supervisor's responsibility to take prompt corrective action in the event of actionable misconduct; it merely recognizes the fact that behavior can and does affect an employee's overall performance and should be recognized. For example, an employee may receive corrective action at the time of misconduct. The nature of that misconduct has an impact on the successful execution of duties and should therefore impact the employee's performance assessment at the conclusion of the performance rating period. The impact of misconduct on the employee's performance rating will depend on its seriousness, evidence of correction, and any other relevant factors.

Though behavior must be addressed in the performance management system, it need not be a separate factor, element, or objective, if sufficiently covered by a more general factor, element, or objective, such as ''teamwork/cooperation.'' Whether constructed as a separate or combined factor, element, or as an objective, the behavioral expectations must be set by the supervisor at the beginning of an appraisal period, and as with other performance expectations, modified or reinforced throughout the appraisal cycle. These expectations normally would include the general behavioral expectations for all employees as stated in the Standards of Ethical Conduct for Employees in the Executive Branch and the DoD Joint Ethics Regulations, as well as any behavioral expectations specifically related to the local organization.

By providing supervisors and managers realistic alternatives for setting employee expectations, and assessing behavior and performance against those expectations, DoD will be better able to hold its employees accountable and recognize and reward those who excel. As part of the performance management system, supervisors and employees should stay aware of the status of performance and behavior and be better able to anticipate and address difficulties. The performance management system is intended to assist in employee performance and behavior development, recognize and reward exemplary performance and behaviors, and identify and remedy shortfalls. Employees share the responsibility of identifying and communicating difficulties, whether due to problems in understanding, communication, or accomplishment of expectations.

By the same token, supervisors and managers will be held accountable for clearly and effectively communicating expectations and providing timely feedback regarding behavior and performance. Supervisors and managers must make meaningful behavior and performance distinctions in support of DoD's new performance-based pay system, as well as identifying and addressing unacceptable performance and misconduct.

Further, supervisors and managers will have a broad range of options for dealing with unacceptable performance. These include but are not limited to remedial training, an improvement period, a reassignment, an oral warning, a letter of counseling, a written reprimand, or adverse action defined in subpart G of these proposed regulations, including a reduction in rate of basic pay or pay band. Resolution of employment difficulties must utilize appropriate methodologies, using remedial and corrective actions, when appropriate, prior to consideration of taking an adverse action. The range of adverse actions will include the involuntary movement of an employee to a lower pay band, giving supervisors and managers another means of dealing with unacceptable performance.

These proposed regulations lay the foundation for a performance management system that is fair, credible, and transparent, and that holds employees, supervisors, and managers accountable for results. However, a performance management system is only as effective as its implementation and administration. To that end, DoD is committed to providing its employees, supervisors, and managers with extensive training on the new performance management system and its relationship to other HR policies and programs.

Setting and Communicating Performance Expectations

Supervisors and managers must establish performance expectations and communicate them to employees. Performance expectations must align with and support the DoD mission and goals. Performance expectations may take the form of goals or objectives that set general or specific performance targets at the individual, team, and/or organizational level, and may include observable or verifiable descriptions of manner, quality, quantity, timeliness, and cost effectiveness. Performance expectations will be communicated to the employee prior to holding the employee accountable and promptly adjusted as changes occur.

Supervisors will involve employees in the planning process to the maximum extent practicable. In so doing employees will better understand the goals of the organization, what needs to be done, why it needs to be done, and how well it should be done. Final determinations in setting expectations, however, are within the authority of the supervisor.

Monitoring Performance and Providing Feedback

One of the main objectives of the pay-for-performance system is to replace the culture of pay-for-longevity with pay-for-results-driven performance. Over time, there should be individual distinctions based on performance, and high performers should receive more pay than average or low performers. Performance-based pay requires improved communication of expectations and performance feedback on the part of supervisors, since employees must understand what they have to do in order to receive higher ratings and increased pay. To achieve that objective, the proposed regulations require ongoing feedback with at least one interim performance review during each appraisal period.

Performance Rating Challenges

The NSPS performance management system, even with its greater emphasis on communication and clarity of purpose, will result in questions and challenges, at least in the beginning. To be effective and allow for appropriate and reasonable rating adjustments, a process needs to be established for challenge purposes. Such a process will allow for the timely determination of rating adjustments, so that final pay adjustment determinations can be made.

As provided in subpart C of the proposed regulations, performance ratings of record will be used to make individual pay adjustments under the new DoD pay system. In recognition of this impact on pay, the regulations permit employees to request timely reconsideration of their ratings of record. Because of the unique nature of such challenges, the implementing issuances will prescribe a separate reconsideration process that will afford every employee an opportunity to seek appropriate redress.

Staffing and Employment—Subpart E

In order to meet its critical mission requirements in a dynamic national security environment, the Department needs greater flexibility to attract, recruit, shape, and retain a high quality workforce. While preserving merit principles and veterans' preference requirements, subpart E of the proposed regulations provides DoD with an expanded set of flexible hiring tools to respond effectively to continuing mission changes and priorities. DoD managers will have greater flexibility in acquiring, advancing, and shaping a workforce tailored to the Department's needs. The new flexibilities provide DoD managers with a greater range of options to adapt their recruitment and hiring strategies to meet changing mission and organizational needs, including consideration of the nature and duration of work. The proposed regulations also address the need to compete for the best talent available by providing the Department with the ability to streamline and accelerate the recruitment process.

Definitions

The proposed regulations simplify the categories of employment. Under NSPS, employees will be defined as either career or time-limited. Career employees serve without time limit in competitive or excepted service positions. Time-limited employees serve either for a specified duration (term) or for an unspecified, but limited duration (temporary). The proposed regulations eliminate the category of ''career-conditional employment;'' under NSPS, those employees may be hired directly into the career service.

The proposed regulations redefine the terms ''promotion'' and ''reassignment'' to fit the NSPS pay banding environment. In addition, the regulations introduce a new term—''reduction in band''—that replaces ''change to lower grade.'' Under pay banding, the GS grade structure is collapsed into fewer, broader salary ranges. Employees progress through those ranges based primarily on performance and job duties. Under NSPS, employees can also receive increased pay as a result of a reassignment within a pay band or promotion to a higher pay band, as provided in subpart C of these proposed regulations.

Appointing Authorities

Governmentwide Appointing Authorities. Under the proposed regulations, the Department will continue to use excepted and competitive appointing authorities and entitlements under chapters 31 and 33 of title 5, U.S. Code, Governmentwide regulations, or Executive orders, as well as other statutes. Individuals hired under those authorities will be designated as career or time-limited employees, as appropriate.

Additional NSPS Appointing Authorities. Under the proposed regulations, the Secretary and the Director may establish new excepted and competitive appointing authorities for positions covered by NSPS. For any appointing authority that may result in entry into the competitive service, including excepted appointments that may lead to a subsequent noncompetitive appointment to the competitive service, DoD and OPM will jointly publish advance notice in the **Federal Register** and provide for a public comment period prior to establishing the authority. However, where DoD determines that it has a critical mission requirement, the Department and OPM may establish such an authority, upon notice in the **Federal Register** but without a preceding comment period. In addition, DoD and OPM may establish excepted appointing authorities for positions that are not in the competitive service without specific notice in the **Federal Register**. The proposed regulations require DoD to publish annually a list of appointing authorities created under this authority and remain in effect. DoD will prescribe appropriate implementing issuances to administer a new authority.

Direct Hire Authority. The proposed regulations authorize DoD to exercise direct hire authority, subject to existing legal and regulatory standards. DoD will prescribe implementing issuances to administer this authority, provide public notice in accordance with 5 U.S.C. 3304(a)(3)(A), inform OPM of all determinations made with respect to the exercise of this authority, and maintain appropriate records and documentation.

Time-limited Appointing Authorities. DoD may continue to use existing time-limited appointing authorities; however, the proposed regulations provide the Secretary (in coordination with OPM) with the authority to prescribe the duration of such appointments, advertising requirements, examining procedures, and the appropriate uses of time-limited employees. The Secretary may also establish procedures under which a time-limited employee who competed for and is serving in a competitive service position may be converted without further competition to the career service, but under the conditions specified in the proposed regulations.

Recruitment and Competitive Examining

In order to increase the efficiency of the recruiting and hiring process without compromising merit principles, the proposed regulations allow DoD to target its recruiting strategy. DoD will provide public notice for all vacancies in the career service and accept applications from all sources; however, applicants from the local commuting area and other targeted sources may be considered first. If there are insufficient qualified candidates in the local commuting area, DoD may consider applicants from outside that area. The proposed regulations also extend examining authority to DoD, to be exercised in accordance with chapters 31 and 33 of title 5, U.S. Code. To exercise this authority, DoD will develop and coordinate examining procedures which will remain subject to OPM oversight. Examining procedures will adhere to the merit system principles in 5 U.S.C. 2301 and veterans' preference requirements set forth in 5 U.S.C. 3309 through 3320, as applicable, and will be available in writing for applicants to review.

Probationary Periods

NSPS is a performance-based system; therefore, a critical first step is the ability to assess employees' performance during their initial entry into the Federal service and as they move to positions requiring markedly new skill sets. Employees' performance during

this time period usually serves as a good indication of how well they will perform throughout their career or as a supervisor. During this period, supervisors should provide assistance to help new employees improve their performance and, at the same time, determine whether or not the employee is suited for the position.

Under the proposed regulations, the Department may prescribe implementing issuances to establish probationary periods as deemed appropriate for certain categories of employees newly appointed to career service positions covered by NSPS. DoD will prescribe the conditions for such periods, including duration and creditable service, in implementing issuances. Employees who are separated during their initial probationary period receive limited appeal rights under subpart H of these proposed regulations; however, a preference eligible who has completed 1 year of creditable service has full appeal rights as provided by subparts G and H of these proposed regulations.

DoD may also prescribe in-service probationary periods for current Federal career employees who move into certain categories of positions. An employee who fails to complete the in-service probationary period will be returned to a position and rate of pay comparable to the position and rate of pay he or she held before the probationary period.

Workforce Shaping—Subpart F

Subpart F provides the Department with the authority to reduce, realign, and reorganize the Department's workforce in a manner consistent with a performance-based HR system. The proposed regulations retain existing veterans' preference protections in reduction in force (RIF). However, the proposed regulations do provide the Department with additional flexibilities to minimize disruption resulting from any reduction in force actions that take place.

For example, under current regulations, the minimum RIF competitive area (*i.e.*, the organizational and geographic boundaries in which employees compete for retention) is an organization with separate personnel administrative authority in a local commuting area. Under the proposed regulations the Department may establish a minimum RIF competitive area on the basis of one or more of the following factors: geographical location(s), line(s) of business, product line(s), organizational unit(s), and funding line(s). These factors provide the Department with additional flexibility to limit the impact of a reduction in force upon its employees (*e.g.*, confining reduction in force actions only to positions directly impacted by a decision to realign the work of those positions to another facility). However, the proposed regulations prohibit the use of competitive areas to target an individual employee for RIF based on nonmerit factors.

The proposed regulations also simplify the RIF process. The first step in determining employees' retention rights under that process is to place employees in the appropriate tenure group (*i.e.*, a group of employees with a given appointment type). Current regulations provide for three tenure groups, including a tenure group comprised of employees serving on career-conditional appointments. The proposed regulations eliminate that tenure group and place all employees in one of two tenure groups: (1) career employees (including employees serving an initial probationary period) and (2) employees on term and comparable non-permanent appointments in a separate, lower tenure group.

The regulations also provide for ''competitive groups'' as a way of identifying those employees who will compete against one another for retention in a RIF, based on their ranking on a retention list (similar to a ''retention register'' under the present reduction in force regulations). Consistent with current regulations, the Department will continue to establish separate competitive groups for employees (1) in the excepted and competitive service, (2) under different excepted service appointment authorities, and (3) with different work schedules. The proposed regulations provide the Department with the flexibility to further define competitive groups on the basis of career group, pay schedule, occupational series or specialty, pay band, and/or trainee status. This new flexibility provides the Department with additional options to minimize disruption if a reduction in force is necessary.

Finally, the proposed regulations give greater emphasis to performance in RIF retention by placing performance ahead of length of service. Under current regulations performance is the least important factor. Under the proposed regulations, employees are placed on a competitive group's retention list in the following order: (1) Tenure group, (2) veterans' preference, (3) individual performance rating, and (4) length of service. As provided by current law, within each tenure group, the Department will list employees with a compensable service-connected disability of 30 percent or more ahead of all other preference eligibles, and will list all other preference eligibles ahead of non-preference eligibles. Within a particular retention list, a qualified higher-standing employee may displace a lower-standing employee; when there are no lower-standing employees, the displaced employee may be released from the retention list and separated by reduction in force. Employees who are separated by reduction in force will continue to be eligible for the existing programs that provide hiring preferences and assistance for obtaining other employment.

Adverse Actions—Subpart G

The regulations propose several revisions and additions to the current adverse actions system. These changes are directed at the cumbersome and restrictive requirements for addressing and resolving unacceptable performance and misconduct. The proposed changes streamline the rules and procedures for taking adverse actions, to better support the mission of the Department while ensuring that employees receive due process and fair treatment guaranteed by the law authorizing the establishment of NSPS.

The following sections identify the major changes proposed by this subpart and briefly describe the purpose of each change.

1. Actions and Employees Covered

Adverse actions include removals, suspensions of any length, furloughs of 30 days or less, reductions in pay, and reductions in pay band (or comparable reduction). Additionally, all actions currently excluded from coverage remain excluded. Subject to § 9901.102(b)(2), all DoD employees are eligible for coverage under subpart G, except where specifically excluded by law or regulation. Members of the National Security Labor Relations Board established in § 9901.907 are also excluded from coverage.

Employees who are serving a probationary period, as established under subpart E, are not covered by this subpart. However, employees who are removed during a probationary period are covered by the termination procedures found in 5 CFR 315.804 or 315.805. Preference eligible employees who are removed after completing 1 year of a probationary period are covered by the adverse action procedures of this subpart.

2. Mandatory Removal Offenses

This subpart permits the Secretary to identify offenses that have a direct and

substantial adverse impact on the Department's national security mission. These offenses would carry a mandatory penalty of removal from Federal service. This proposed change allows management to act swiftly to address and resolve misconduct or unacceptable performance that would be most harmful to the Department's critical mission. These proposed mandatory removal offenses would be identified in advance and made known to all employees. Employees alleged to have committed these offenses will have the same MSPB appeal rights as provided other employees against whom appealable adverse actions are taken. However, only the Secretary may mitigate the penalty for committing a mandatory removal offense (MRO). The proposed MRO procedures include a requirement that a proposed notice of mandatory removal be issued only after approval by the Secretary. DoD has not yet identified a proposed list of such offenses. However, it is important to preserve the Secretary's flexibility to carefully and narrowly determine the offenses that will fall into this category and to make changes over time. The absence of this flexibility has been problematic at the Internal Revenue Service (IRS), where the IRS Restructuring Act codified mandatory disciplinary offenses in law and limited the agency's ability to make needed changes. The Department will identify and publish mandatory removal offenses through implementing issuances in advance of their application.

3. Adverse Action Procedures

This subpart retains an employee's right to representation and a written decision but provides shorter advance notice periods and reply periods than are currently required for appealable adverse actions. Employees are entitled to a minimum of 15 days advance notice and a minimum of 10 days to reply, which run concurrently. However, if there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the Department will provide a minimum 5 days advance notice and opportunity to reply, which will run concurrently. These proposed changes facilitate timely resolution of adverse actions while preserving employee rights.

4. Single Process and Standard for Action for Unacceptable Performance and Misconduct

This subpart establishes a single system for taking adverse actions based on misconduct and/or unacceptable performance. This proposed change represents a return to a simplified approach that existed prior to the 1978 passage of the Civil Service Reform Act and chapter 43 of title 5, U.S. Code.

Congress enacted chapter 43 in part to create a simple, dedicated process for agencies to use in taking adverse actions based on unacceptable performance. Since that time, however, chapter 43 has not worked as Congress intended. In particular, interpretations of chapter 43 have made it difficult for agencies to take actions against poor performers and to have those actions upheld. As a result, agencies have consistently preferred to use the procedures available under chapter 75 of title 5 rather than chapter 43 when taking actions for unacceptable performance.

The proposed regulations eliminate the requirement for a formal, set period for an employee to improve performance before management may take an adverse action. Management selects employees for their positions because the employees are well qualified. As set forth in proposed subpart D, management must explain to employees what is expected of them when it comes to performance. If an employee fails to perform at an acceptable level, management may use a variety of measures, including training, regular feedback, counseling and, at management's discretion, an improvement period, to address and resolve performance deficiencies. If an employee is still unable or unwilling to perform as expected, it is reasonable for management to take an action against the employee.

The proposed standard for taking an adverse action remains ''for such cause as will promote efficiency of the service'' as currently in title 5, U.S. Code.

Appeals—Subpart H

Subpart H of part 9901 covers employee appeals of certain adverse actions taken under subpart G. Appealable actions include removals, suspensions for more than 14 days, furloughs, reductions in pay, or reductions in pay band (or comparable reduction). Suspensions of 14 days or less and other lesser disciplinary measures are not appealable to MSPB, but may be grieved through a negotiated grievance procedure or an administrative grievance procedure, whichever is applicable. Also, actions taken under DoD placement programs are not appealable to MSPB. Furthermore, employees who are removed during a probationary period are provided the appeal rights found in 5 CFR 315.806. Preference eligible employees who are removed after completing 1 year of a probationary period are provided the appeal rights of this subpart.

Section 9902 of title 5, U.S. Code, requires that these appeal regulations provide DoD employees fair treatment, and are afforded the protections of due process. It provides employees the right to petition the full Merit Systems Protection Board for review of the record of a final Department decision. The law also provides that current legal standards and precedents applied by MSPB under 5 U.S.C., chapter 77, continue to apply, unless such standards and precedents are inconsistent with legal standards established under this subpart. These regulations state that in applying existing legal standards and precedents, MSPB is bound by the legal standard set forth in § 9901.107(a)(2), which provides that these regulations must be interpreted in a way that recognizes the critical national security mission of the Department, and each provision must be construed to promote the swift, flexible, effective day-to-day accomplishment of this mission as defined by the Secretary.

This subpart establishes procedures and timeframes for filing appeals with MSPB and modifies rules that MSPB will use to process appeals from DoD employees. These regulations are intended to ensure appropriate deference to the adverse actions taken by DoD and to streamline the way MSPB cases are handled while continuing to preserve and safeguard employee due process protections. In addition, they provide for an internal DoD review process of initial decisions issued by MSPB administrative judges.

The Secretary and the Director will conduct an ongoing evaluation of the DoD HR system to ensure that it is achieving its intended purposes. As part of this evaluation, the Department and OPM will pay particular attention to the adverse action and appeal procedures established by these regulations. As noted (and discussed in more detail below), those procedures continue to permit employees to appeal most adverse actions to MSPB, despite the fact that DoD and OPM could have established a separate appellate body for the initial review of all such actions, particularly ''mandatory removal offenses.''

In proposing these appellate procedures, the Secretary and the Director were especially mindful of 5 U.S.C. 9902(h)(1), which requires that the Secretary consult with MSPB on changes to chapter 77 of title 5. This requirement was met through consultations between members and

staffs of MSPB, DoD, and OPM. During those consultations, DoD and OPM officials described specific concerns with existing procedures and discussed the range of appellate options and alternatives that were under consideration. For their part, MSPB officials were particularly constructive in responding to those concerns, offering numerous suggestions to address them, including several modifications to their own rules and regulations, and expressing the intention to issue conforming regulations.

The appellate procedures below reflect many of those suggestions, as well as the constructive dialogue that gave rise to them. Indeed, the proposal to retain MSPB administrative judges was predicated on the results of that dialogue. However, the cumulative effect of these changes can be assessed only as they are actually implemented and administered by MSPB. Such an assessment will be undertaken by DoD and OPM after the Department has accumulated sufficient experience under NSPS.

1. Appeals to MSPB

These regulations retain MSPB administrative judges as the initial adjudicators of employee appeals of adverse actions. At the same time, these regulations propose new substantive standards that MSPB will apply to DoD cases to improve the appeals process and accommodate and support the agency's critical national security mission. These regulations also propose new case-handling procedures that MSPB will apply to facilitate the efficient and expeditious resolution of appeals.

We gave serious consideration to establishing a DoD internal appeals board to replace MSPB administrative judges. However, we concluded that the potential advantages of creating an internal DoD appeals board—greater efficiency of decision-making and deference to agency mission and operations, among them—could be achieved if MSPB administrative judges were retained as the initial adjudicators for adverse actions but with substantive and significant procedural modifications. In accordance with 5 U.S.C., section 9902, employees retain the right to petition the full Merit Systems Protection Board for review of the record of a final Department decision.

2. Department Review of Initial MSPB Administrative Judge Decisions

This subpart authorizes the Department to review initial decisions of MSPB administrative judges (AJ). The authority provides that DoD may reconsider and affirm, remand, modify, or reverse an initial MSPB AJ decision for which a request for review (RFR) has been filed by either party concurrently with the full MSPB and the Department. DoD will promulgate implementing issuances that establish procedures for the submission of an RFR and review of an initial decision. The Department's review authority includes:

- Affirming an initial MSPB AJ decision where the Department determines that such decision shall serve as precedent.
- Remanding an initial MSPB AJ decision to the assigned AJ for further adjudication where the Department believes that there has been a material error of fact, or that there is new evidence material to the case.
- Modifying or reversing an initial MSPB AJ decision or an MSPB AJ decision on remand where the Department determines that (1) the decision has a direct and substantial adverse impact on the Department's national security mission, (2) the decision is based on an erroneous interpretation of law, this subpart, or Governmentwide rule or regulation, (3) the decision is based on a material error of fact, or (4) there is new evidence material to the case.

Either party who wishes to file a request for review (RFR) must file the RFR with the Department (and concurrently with the full MSPB) no later than 30 days after issuance of an initial MSPB AJ decision. If the Department intends to review an initial MSPB AJ decision, the Department must provide notice of its intent no later than 30 days after receipt of a timely filed RFR.

Any initial MSPB AJ decision for which an RFR has been filed (or any remand decision) that DoD affirms, modifies, or reverses will become the final Department decision. In such cases, the final Department decision is precedential unless otherwise determined by the Department or reversed or modified by the full MSPB. An employee or OPM may file a petition for review (PFR) to the full MSPB, and must file such petition within 30 days after issuance of the final Department decision.

Any initial MSPB AJ decision for which an RFR has been filed that DoD does not affirm, remand, modify, or reverse shall become the final Department decision. In such cases, the final Department decision is not precedential. The RFR will be processed as a PFR by the full MSPB.

Any initial MSPB AJ decision for which no RFR has been filed shall become the final Department decision. That decision is not precedential and may not be appealed to the full MSPB.

In authorizing establishment of a human resources management system under the National Security Personnel System Act (NSPS), Congress specifically required that the full MSPB may order corrective action as it considers appropriate only if MSPB determines that the final Department decision was: (a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) obtained without procedures required by law, rule, or regulation having been followed; or (c) unsupported by substantial evidence. These standards are an adoption of the standards for judicial review of a final MSPB decision currently provided under 5 U.S.C. 7703. Although these standards are appropriate for judicial review, we believe they are too high for an administrative review of adverse actions. That is, such standards would significantly weaken the opportunity to correct an erroneous MSPB AJ decision, whether the employee or the Department petitions the correction. These regulations provide that the Department may review an initial MSPB AJ decision, and correct such decision as appropriate by applying a standard that provides for meaningful corrective action and preserves statutory requirements of fairness and due process.

The Department needs the authority to review initial MSPB AJ decisions to ensure that MSPB interprets NSPS and these regulations in a way that recognizes the critical mission of the Department; and to ensure that MSPB gives proper deference to such interpretation.

Notwithstanding the Department's need for review authority, that authority should not be unlimited. Therefore, as previously described, these regulations limit the Department's review to those initial MSPB AJ decisions for which either party has timely filed a request for review, and the authority to issue a final Department decision that modifies or reverses an initial MSPB AJ decision is limited by specific criteria set forth in these regulations.

3. Appeals of Mandatory Removal Offenses

An employee will be able to appeal a removal action to MSPB based on an MRO in substantially the same manner he or she will be able to appeal an adverse action, including removal, based on a non-MRO.

4. MSPB Appellate Procedure Improvements

MSPB will have the authority to review and adjudicate actions covered by this subpart as prescribed in 5 U.S.C. 9902. These regulations propose to modify certain case processing rules, legal standards, and precedents. Current title 5 provisions and MSPB regulations will govern the initial review and adjudication of adverse action appeals, unless inconsistent with the modifications identified in this section. The modifications being made to current MSPB requirements will further the mission of DoD without impairing fair treatment and due process protections. Key procedural modifications include the following:

- When some or all material facts are not in genuine dispute, the AJ may limit the scope of the hearing, or issue a decision without a hearing.
- The appeal filing deadline, including the deadline for class appeals, is decreased from 30 days to 20 days.
- The administrative judge's initial decision must be made no later than 90 days after the date on which the appeal is filed.
- If the full MSPB reviews a final Department decision, either through an employee's petition for review or OPM intervention, the full MSPB must render its final decision no later than 90 days after the close of record. If OPM seeks reconsideration of a final MSPB decision or order, MSPB must render its decision no later than 60 days after receipt of the opposition to OPM's petition in support of such reconsideration.
- Currently, the parties to an appeal may submit unilateral requests for additional time to pursue discovery or settlement. The ability of the parties to unilaterally submit a request for case suspension is eliminated.
- The parties may seek discovery regarding any matter that is relevant to any of their claims or defenses. However, by motion to MSPB, either party can seek to limit any discovery being sought because it is privileged; not relevant; unreasonably cumulative or duplicative; or can be secured from some other source that is more convenient, less burdensome, or less expensive. Discovery can also be limited through such a motion if the burden or expense of providing a response outweighs its benefit. Prior to filing such a motion with MSPB, the parties must confer and attempt to resolve any pending objections. When engaging in discovery, either party can submit only one set of interrogatories, requests for production, and requests for admissions. The number of interrogatories or requests for production or admissions may not exceed 25 per pleading, including subparts, and neither party may conduct/compel more than 2 depositions. However, either party may file a motion requesting additional discovery. Such a motion will be granted only if MSPB determines that necessity and good cause has been shown to justify additional discovery.
- An administrative judge may not grant interim relief or grant a stay of an action taken against an employee. Only the full MSPB may order interim relief or stay an adverse action following the final Department decision regarding the adverse action.
- Any response to a petition for review or a cross petition for review must be filed within 30 days after the date of service of the petition or cross petition.

All of these modifications will expedite and streamline the appeals process so that both employees and the Department will be able to resolve appeals more quickly and efficiently than is possible today. These regulations also retain due process protections—notice, an opportunity to respond, and a third-party review, either in person or on the record—for removal actions. These regulations provide the same procedural protections for all actions covered in subpart G. These regulations retain the statutory requirement that the appealability of a removal be unaffected by the individual's status under any retirement system.

Section 7701 of title 5, U.S. Code, currently authorizes the Director of OPM to intervene in an MSPB proceeding or to petition MSPB for review of a decision if the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, or regulation under OPM's jurisdiction. Given OPM's responsibility for Governmentwide personnel management, these regulations authorize OPM to intervene in such situations regardless of whether the law, rule or regulation is one that falls under OPM jurisdiction. These regulations provide that the Director may exercise this intervention authority after consultation with the Secretary.

5. Standard of Proof

Currently, actions taken under chapter 75 are sustained if supported by a preponderance of the evidence, and performance actions taken under chapter 43 are sustained if supported by substantial evidence, a lower standard of proof than preponderance. In all cases arising under this subpart, dealing either with performance or conduct, the Department's decision will be sustained if it is supported by a preponderance of the evidence. Changing the standard of proof to the single, higher standard regardless of the nature of the action simplifies the appeal process, and assures consistency without compromising fairness.

6. Affirmative Defenses

Consistent with current law, the Department's action will not be sustained if MSPB determines that (1) a harmful procedural error occurred; (2) the decision was based on any prohibited personnel practice; or (3) the decision was not otherwise in accordance with law.

These regulations require the Department to prove by a preponderance of the evidence that an action taken against an employee promotes the efficiency of the service, but these regulations do not permit MSPB to reverse the action based on the way in which the charge is labeled or the misconduct is characterized. This will eliminate excessively technical pleading requirements in adverse action proceedings imposed by MSPB and the U.S. Court of Appeals for the Federal Circuit in *King* v. *Nazelrod,* 43 F.3d 663, and similar cases. As long as the employee is on notice of the facts sufficient to respond to the factual allegations of a charge, the Department will have complied with the notice and due process requirements of these regulations.

Moreover, MSPB may not reverse the Department's action based on the way a performance expectation is expressed, as long as the expectation would be clear to a reasonable person.

7. Penalty Review

In cases involving a mandatory removal offense, the penalty selected by the Department may not be reduced or otherwise modified by MSPB. Only the Secretary may mitigate the penalty under these regulations.

In all other cases arising under this subpart, MSPB (as well as arbitrators) may mitigate penalties, but only under very limited circumstances. Because the Department bears full accountability for national security, it is in the best position to determine the most appropriate adverse action for unacceptable performance or misconduct. The Department's judgment in regard to penalty should be given deference. These regulations preclude mitigation of the penalty selected by DoD except where, after granting deference to the Department, a determination is made that the penalty

is so disproportionate to the basis for the action as to be wholly without justification.

This authority is significantly more limited than MSPB's current mitigation authority under the standard first enunciated in *Douglas* v. *Veterans Administration* (5 M.S.P.R. 280 (1981)). Under that decision, MSPB stated that it would evaluate agency penalties to determine not only whether they were too harsh or otherwise arbitrary but also whether they were unreasonable under all the circumstances. In practice, this has meant that MSPB has exercised considerable latitude in modifying agency penalties.

With this new, substantially more limited standard for MSPB mitigation of penalties selected by DoD, the intent is to explicitly restrict the authority of MSPB to modify those penalties to situations where there is simply no justification for the penalty. MSPB may not modify the penalty imposed by the Department unless such penalty is so disproportionate to the basis for the action as to be wholly without justification. In cases of multiple charges, MSPB or an arbitrator may mitigate a penalty where not all of the charges are sustained. The third party's judgment is based on the justification for the penalty as it relates to the sustained charge(s). These regulations are intended to ensure that when a penalty is mitigated, the maximum justifiable penalty must be applied.

Nothing in these regulations would limit the Secretary's sole and exclusive authority to mitigate any penalty imposed on, or rescind any action taken against a DoD employee pursuant to subpart G.

8. Attorney Fees

OPM and DoD have modified the current standard for recovering attorney fees. Under the current standard, the Department may be required to pay attorney fees based on facts that were not known to management when the action was taken. This is an unreasonable standard that can deter the Department from taking action in appropriate cases and has a chilling effect on the Department's ability to carry out its mission. Accordingly, the proposed regulations provide that a prevailing appellant may recover attorney fees if the Department's action was clearly without merit based upon facts known to management when the action was taken. The proposed regulations also continue to require attorney fees if a prohibited personnel practice was committed by the Department.

9. Alternative Dispute Resolution

These regulations encourage the use of alternative dispute resolution (ADR) procedures and provide that ADR will be subject to collective bargaining to the extent permitted by subpart I, Labor-Management Relations. However, because ADR and settlement efforts are most successful when voluntary, these regulations prohibit MSPB from *requiring* ADR or settlement in connection with any action taken under this subpart. Once either party decides that settlement is not desirable, the matter will proceed to adjudication. Eliminating settlement efforts that are contrary to the expressed wishes of one or both of the parties will speed up the adjudication process and strengthen management decisionmaking authority.

Where the parties agree to engage in settlement discussions, the case will be assigned to an official specifically designated for that sole purpose, rather than the official responsible for adjudication. This is necessary to avoid actual or perceived conflicts of interest on the part of MSPB adjudicating officials.

10. Discrimination Allegations

The proposed regulations do not alter the substance of existing law regarding actions involving discrimination. They preserve the rights of employees to obtain review of their discrimination claims by EEOC in ''mixed cases,'' *i.e.*, cases that are appealable to MSPB involving allegations of discrimination, and they also preserve judicial review in such cases.

11. Judicial Review

Decisions of MSPB are subject to review by the U.S. Court of Appeals for the Federal Circuit based on the same standard currently provided for in 5 U.S.C. 7703. As provided by 5 U.S.C. 9902(h)(6), the Secretary, after notifying the Director, may obtain judicial review of any final order or decision of the full MSPB under the same terms and conditions as provided an employee. Before seeking judicial review, the Secretary may seek reconsideration of a final MSPB decision.

12. Savings Provision

These regulations clarify that this subpart does not apply to adverse actions proposed prior to the date of an affected employee's coverage under this subpart.

Labor-Management Relations—Subpart I

Congress recognized DoD's need for enhanced flexibilities to ensure mission accomplishment when it passed the National Defense Authorization Act providing for the creation of the National Security Personnel System (NSPS). Such a system must be ''flexible'' and ''contemporary,'' enabling a swift response to ever-changing national security threats. The labor-management relations regulations in this part are designed to meet these compelling concerns.

1. Purpose

DoD's ability to carry out its mission swiftly and authoritatively is of paramount importance to national security. The DoD civilian workforce plays a critical role in the successful accomplishment of that mission. In authorizing the creation of the NSPS, Congress recognized that maintaining the status quo with respect to labor-management relations would not provide DoD with a workforce that is sufficiently agile and flexible to execute the current and future national security mission. Thus, it authorized the Secretary of Defense and the Director of the Office of Personnel Management to establish a labor-management relations system that addresses the unique role that the Department's civilian workforce has in supporting the Department's national security mission. *See* 5 U.S.C. 9902(m).

These regulations modify the provisions of 5 U.S.C. 7101 through 7135, unless noted otherwise in this subpart, and define the purpose of the labor-management relations system. They implement the requirements of 5 U.S.C. 9902 by ensuring the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to the provisions of chapter 99 and any exclusion from coverage or limitation on negotiability established pursuant to law, rule, DoD issuance and any other legal authority, including the authority granted to DoD and OPM to promulgate these regulations.

2. Definitions

These regulations keep intact a number of definitions provided for in chapter 71 of title 5, but those definitions have been edited where applicable to reflect references to the proposed regulations. For example, as a general matter, the term ''agency,'' which is used throughout the definition section of chapter 71, has been replaced by the term ''Department'' and refers to the Department of Defense. The regulations adopt the following terms and their associated definitions from that chapter and apply them to DoD:

''Authority,'' ''dues,'' ''person,'' and ''professional employee.'' To better fit the Department's labor-management relations system, the regulations make substantive modifications to the following terms:

- *Collective bargaining* is modified to specifically identify the Department instead of the term agency in chapter 71 and to remove the term ''consult'' because consultation, under the proposed regulations, as well as under chapter 71, does not require that the parties reach an agreement;
- *Conditions of employment* is modified to exclude determinations regarding pay and pay adjustments, in addition to classification determinations;
- *Confidential employee* is modified to include those employees providing confidential support to an individual who formulates or effectuates management policies, not just those employees providing support to an individual who formulates or effectuates labor-management relations policies;
- *Grievance* is modified to limit grievances solely to those issues defined as conditions of employment. Grievances regarding the application of laws, rules, regulations, and DoD issuances are limited to those issued for the purpose of affecting the working conditions of employees—not those that may do so indirectly or incidentally. To this extent, DoD and OPM adopt the D.C. Circuit's interpretation in *U.S. Dep't of Treasury, U.S. Customs Service* v. *FLRA,* 43 F.3d 682 (1994), of what constitutes a ''grievance;''
- *Management official* is modified to include individuals who have the authority to recommend actions, if the exercise of the authority is not merely routine or clerical in nature; and
- *Supervisor* is modified to include employees who supervise military members of the armed services.

The following terms have been added because of their significance to the NSPS system:

- *Board* refers to the newly established National Security Labor Relations Board (NSLRB);
- *Component* was added to clarify that the Secretary determines which organizations within DoD are considered components for purposes of this subpart;
- *Consult* was added as a distinct and separate method for considering the interests, opinions, and recommendations of a recognized labor organization. Consultation can be accomplished in face-to-face meetings or through other means such as teleconferencing or written communications;
- *DoD issuance or issuances* identifies the types of documents that are considered issuances; and
- *Grade* is defined to clarify its usage under various job grading and position classification systems.

3. Coverage

Employees, who would otherwise be covered by chapter 71, except as modified by this subpart, are covered under the NSPS labor-management relations system.

4. Impact on Existing Agreements

In order to ensure consistent application of DoD issuances, as well as this part and its implementing issuances, provisions of collective bargaining agreements that conflict with this part and/or such issuances are unenforceable as of the effective date of this part or such issuances. If the union believes that management has inappropriately found contract provisions unenforceable, it may appeal such decisions to the National Security Labor Relations Board. While as a general matter, contract provisions that conflict with the provisions of these regulations and their implementing issuances are unenforceable, the Secretary may allow for the continuance of all or part of such provisions. Where contract provisions conflict with these regulations or their implementing issuances, the parties, upon request by the exclusive representative, will have 60 days to bring the remaining negotiable terms directly affected by the regulations into conformance.

5. Employee Rights

This section of the regulations parallels the provisions contained in 5 U.S.C. 7102. Covered employees, as defined in the regulations, will have the right to form, join, or assist any labor organization, or to refrain from such activity. Each employee will be protected in the exercise of any rights under the regulations through procedures established in this subpart.

6. National Security Labor Relations Board

The Department will create a National Security Labor Relations Board (NSLRB) composed of at least three members appointed to fixed terms. The Secretary will appoint the members, with one member appointed from a list developed in consultation with the Director of OPM. Members will be independent, distinguished citizens known for their integrity, impartiality and expertise in labor relations and/or the DoD mission, and/or relevant national security matters. The NSLRB must interpret the regulations in subpart I and related decisions and policies in a way that recognizes the critical mission of the Department and the need for flexibility.

The NSLRB's decisions are subject to limited review by the Authority, and subsequent judicial review under the rules established in 5 U.S.C. 7123. Excluded from NSLRB review are arbitration exceptions involving adverse actions appealable under subpart H of this part or 5 U.S.C. chapters 43 and 75. While the Department may issue interim rules for the NSLRB, the NSLRB will ultimately prescribe its own rules and publish them in the **Federal Register.**

In evaluating the merits of a separate National Security Labor Relations Board that would largely replace FLRA, with its Governmentwide responsibilities, DoD and OPM put a high premium on the opportunity to establish an NSLRB whose members would have a deep understanding of and appreciation for the unique challenges the Department faces in carrying out its national security mission. To ensure independence and impartiality, the DoD NSLRB members will be appointed to fixed terms and be subject to the same criteria for removing members of the Authority and MSPB, *i.e.,* inefficiency, neglect of duty, or malfeasance.

DoD and OPM considered splitting jurisdiction for adjudicating certain labor disputes between FLRA and the NSLRB. The proposed regulations give the NSLRB jurisdiction for all such disputes, except those involving questions of representation, to ensure consistent application of the NSPS labor relations system as well as to minimize various forums for addressing matters stemming from a single incident. Thus, the NSLRB will issue decisions on unfair labor practices, to include scope of bargaining, duty to bargain in good faith, and information requests; certain arbitration exceptions; negotiation impasses; and questions regarding national consultation rights. However, DoD and OPM specifically solicit comments on other alternatives, such as requiring (or entering into a service level agreement with) FLRA or some other organization to provide investigative and other services, subject to these regulations.

Both the NSLRB and FLRA must interpret the regulations in subpart I in a way that promotes the swift, flexible and effective, day-to-day accomplishment of the Department's mission as defined by the Secretary. The NSLRB is authorized to issue advisory opinions on important issues of law that are binding on the parties. These opinions will help both labor and management understand how key

provisions of the regulations will be interpreted without the time and expense of years of litigation.

Matters that come before the NSLRB may be reviewed *de novo,* which means that the NSLRB will have the discretion to reevaluate the evidence presented by the record and reach its own independent conclusions with respect to the matters at issue. Under chapter 71, FLRA reviews issues of law *de novo.* The Board will have the same authority, but it may also employ a *de novo* review to factual findings and contract interpretation. Given the inherently executive branch nature of decisions relating to national security and the Department's unique responsibilities in this area, the Board is authorized to conduct a thorough review of all matters, including factual determinations by its adjudicators or arbitrators, to safeguard the Department's national security mission.

7. Management Rights

To carry out its national security mission, the Department must have the authority to take actions quickly when circumstances demand; it must be able to develop and rapidly deploy resources to confront threats in an ever-changing national security environment; and it must be able to act without unnecessary delay.

Actions such as these involve the exercise of management's reserved rights and lie at the very core of how DoD carries out its mission. Under chapter 71 of title 5, the obligation to notify the union well ahead of any changes in the workplace and complete all negotiations *before* making any changes can seriously impede the Department's ability to meet mission demands. To ensure that the Department has the flexibility it needs, the Department and OPM propose to revise the management rights provisions of chapter 71. Expanding the list of nonnegotiable subjects in section 7106 to include what are now permissive subjects of bargaining—the numbers, types, and grades of employees and the technology, methods, and means of performing work—is proposed. The proposed regulations prohibit bargaining over the exercise of these rights and over other rights enumerated in chapter 71, including the right to determine mission, budget, organization, and internal security practices, and the right to hire, assign and direct employees, and contract out.

In addition, the proposed regulations prohibit bargaining over the procedures management will follow in the exercise of certain of its rights—to determine the mission, budget, organization, number of employees, and internal security practices of the Department; to hire, assign, and direct employees in the Department; to assign work, make determinations with respect to contracting out, and to determine the personnel by which Departmental operations may be conducted; to determine the numbers, types, pay schedules, pay bands and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, and the technology, methods, and means of performing work; to assign employees to meet any operational demand; and to take whatever other actions may be necessary to carry out the Department's mission. The Department can take action in any of these areas without advance notice to the union.

The Department will bargain over procedures and appropriate arrangements management will follow in the exercise of certain other rights—to lay off and retain employees, or to suspend; remove; reduce in pay, pay band, or grade; or take other disciplinary action against such employees or, with respect to filling positions, to make selections for appointments from properly ranked and certified candidates for promotion or from any other appropriate source—as provided for in these regulations. This bargaining may be prospective, that is, after management has exercised such right. Where management is not required to negotiate over procedures stemming from the exercise of its rights, the proposed regulations provide a mechanism for obtaining an exclusive representative's views and recommendations regarding such procedures.

8. Exclusive Recognition of Labor Organizations

Election procedures for determining exclusive representatives have not changed from the requirements of chapter 71.

9. Determination of Appropriate Units for Labor Organization Representation

In determining appropriate bargaining units, FLRA will continue to apply the same factors set forth under chapter 71. However, in applying these criteria, the proposed regulations require FLRA to apply them consistent with the Department's mission, organizational structure, and the requirements of § 9901.107(a). Using this standard will help align the Department's bargaining units as closely as possible with the agency's mission and organizational structure.

Besides requiring consideration of the Department's mission and organizational structure in determining appropriate units, the proposed regulations exclude additional categories of employees from coverage. Supervisors of military members of the armed services are excluded from coverage because they engage in supervisory functions and their inclusion in bargaining units creates a conflict of interest. The tasks associated with supervision do not change based on the type of person supervised. Employees engaged in all types of personnel work are also excluded from the unit. This is a change from the current law, which allows employees engaged in personnel work of a purely clerical capacity to be included in a bargaining unit. The regionalization of DoD's personnel functions has made the clerical nature of personnel work a false distinction for bargaining unit membership. Those individuals are now, and will continue to be, frequently called upon to provide advice and guidance to management officials on personnel functions. Additionally, these individuals have direct access to all confidential personnel records and discussions. By including these individuals in bargaining units, a conflict of interest exists such that management officials risk compromising confidential management information when seeking or accepting guidance from personnelists within the personnel office. Further, inclusion of clerical personnelists in the bargaining unit prohibits the personnel officer from using his or her full staff in areas that are vital to the efficient accomplishment of the mission. The removal of these positions will eliminate unnecessary administrative disputes. Finally, this section removes attorney positions from bargaining unit coverage. Supervisors and managers must be assured that communications with attorneys are confidential and unbiased. These communications often go to the heart of the managerial function and thus inclusion of attorneys in the bargaining unit creates at a minimum the perception of a conflict of interest.

10. National Consultation

The Department and Components will conduct national consultation over substantive changes in conditions of employment generated by the Department or the Component with those unions holding national consultation rights. National consultation is not required where national level bargaining has occurred or where the continuing collaboration procedures of 9901.105 apply. Nothing

in this section precludes management from seeking the views of other labor organizations not holding national consultation rights, nor does the conduct of national consultation eliminate any local labor relations obligations.

11. Representation Rights and Duties

As in chapter 71, these proposed regulations provide that recognized unions are the exclusive representatives of the employees in the unit and act for and negotiate on their behalf, consistent with law and regulation.

Under current law, a union has the right to send a representative to a formal discussion (''formal meetings'') called by management to discuss general working conditions with employees. Determining what is and is not a formal discussion, as FLRA and courts have interpreted that term, requires managers to balance numerous factors concerning the relative formality of the meeting and the precise subject matter discussed. Because of the complicated and confusing criteria, front-line managers and supervisors are often reluctant to hold discussions with employees concerning everyday workplace issues, which can affect work unit effectiveness and efficiency and inhibit communication and problem solving.

The proposed language redefines formal discussions as discussions or announcements of new or substantially changed personnel policies, practices, or working conditions. It specifically excludes discussions on operational matters where discussions do not involve the establishment of new policies or practices.

An exclusive representative is entitled to attend discussions regarding grievances filed under its negotiated grievance procedure. Moreover, these proposed regulations resolve any uncertainty resulting from litigation about whether unions have an institutional right to be present during EEO proceedings, to include mediation efforts, after a formal EEO complaint has been filed or other matters appealed by employees. Under these proposed regulations, unions do not have such a right unless the complainant raises the matter in the negotiated grievance procedures.

Where an employee elects to use a procedure outside the negotiated grievance procedure (such as EEO), the employee has the choice of personal representatives (including, at the employee's option, a union official acting as personal representative). However, the union has no institutional right to represent the employee or attend meetings related to the resolution of the employee's issues. Where a resolution impacts the bargaining unit as a whole, the union will be fully advised and afforded the opportunity to exercise applicable rights. This change strikes an appropriate balance between the union's institutional rights and employee privacy and, with regard to complaint processes other than negotiated grievance procedures.

The proposed regulations also preserve what has come to be known as the ''Weingarten'' right, which permits union representation at the employee's request when management examines an employee during an investigation and the employee reasonably believes that discipline will follow. However, the proposed regulations exclude investigations conducted by the Offices of the Inspectors General and other independent Department or Component investigatory organizations, such as U.S. Army Criminal Investigation Command and the Air Force Office of Special Investigations; ''Weingarten'' representation rights do not apply in such investigations. These exclusions were identified to ensure that independent bodies can conduct truly independent investigations. Further, this change ensures that investigations involving criminal matters are not affected by unnecessary delay, harm to the integrity of the investigation, or issues of confidentiality.

Under these regulations, the Department will hold employee representatives to the same conduct requirements as any other DoD employees. The proposed regulations clarify that the Department may address the misconduct of any employee, including employees acting as union representatives, as long as the agency does not treat employees more severely because they are engaging in union activity. The Department will no longer be bound by FLRA's ''flagrant misconduct'' standard or any other test developed through case decisions which may immunize union representatives engaged in otherwise actionable misconduct. However, the proposed regulation is not intended to target the content of ideas.

This section also retains the requirement that the parties are to negotiate in good faith and approach negotiations with a sincere resolve to reach a collective bargaining agreement. Such agreements will be subject to agency head review as currently provided in chapter 71.

Under chapter 71, a union has the right to information maintained by the agency if the information is necessary and relevant to the union's representational responsibilities. This right is maintained with some modifications in these regulations. Under these regulations, disclosure of information is not required if adequate alternative means exist for obtaining the requested information, or if proper discussion, understanding, or negotiation of a particular subject within the scope of collective bargaining is possible without recourse to the information. This change also relieves management of the unnecessary administrative burden of producing information that can readily be obtained some other way and recognizes technological advances in information access and sharing. The proposed regulations further provide that information may not be disclosed if an authorized official determines that disclosure would compromise the Department's mission, security, or employee safety.

The regulations specify that sensitive information such as personal addresses, personal telephone numbers, personal e-mail addresses, or any other information not related to an employee's work, may not be disclosed. While this is not a change in existing statutory interpretation, it is necessary to specify these limitations in the proposed regulations, given the extremely sensitive nature of the Department's mission and the serious consequences if such information were deliberately or inadvertently disclosed to an inappropriate source.

In recognition of the foregoing duties of the union, the regulations preserve the official time provisions in chapter 71. In so doing, we have clarified that, consistent with current law, official time is not permitted for representational duties outside the exclusive representative's bargaining unit. However, we have provided an exception for multi-unit bargaining and bargaining above the level of exclusive recognition, subject to mutual agreement of the parties. Current chapter 71 authorizations and requirements concerning allotments also are retained in this section.

12. Unfair Labor Practices

Management's unfair labor practices (ULPs) remain almost identical to those contained in chapter 71. One major difference is the elimination of 7116(a)(7), which provided that it is a ULP to enforce a rule or regulation, which is in conflict with a collective bargaining agreement if the agreement was in effect prior to the issuance of the rule or regulation. Such action is no longer a ULP because the proposed regulations provide that law, Governmentwide rules and regulations,

Presidential issuances, and DoD issuances will supersede current collective bargaining agreements where the terms conflict. This includes Department issuances in existence prior to the effective date of these regulations. There is no significant change to the union ULPs contained in chapter 71.

13. Duty To Bargain and Consult

In order to ensure a consistent approach to managing the Department within a multi-union, multi-bargaining unit environment, the proposed regulations specify that there is no duty to bargain over DoD issuances (which includes Component issuances). In addition, management has no obligation to bargain over changes to conditions of employment unless the change is foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees in that part of the bargaining unit affected by the change. Typically, where a change in conditions of employment is of duration shorter than the bargaining process associated with that change, or where it affects a minimal number of employees, there is no bargaining obligation associated with that change. This regulatory change will focus bargaining on those matters that are of significant concern and impact and relieve the parties of potentially lengthy negotiations over matters that are limited in scope and effect.

If parties bargain over an initial term agreement or its successor and do not reach agreement within 90 days, the parties may agree to continue bargaining after the 90-day period or either party may refer the matter to the NSLRB for impasse resolution. Mid-term bargaining over proposed changes in conditions of employment must be completed within 30 days or management will be able to implement the change after notifying the union. Either party may refer the matter to the NSLRB for impasse resolution after the 30-day period. The obligation to bargain, however, does not prevent management from exercising its management rights identified in § 9901.910.

14. Multi-Unit Bargaining

A number of installations and organizations within the Department of Defense have multiple bargaining units. When a change is needed affecting the entire installation, management must engage in as many negotiations as there are units. This is unnecessarily time consuming and frequently results in numerous variations to a single policy. In order to expedite negotiations and ensure consistent application of the policy, management may require multi-unit bargaining over particular issues. Such negotiations will be binding on all parties requested to participate in the negotiations and supersede any conflicting provisions in current negotiated agreements or past practices. Such agreements will not be subject to ratification as such efforts contradict the basis for such negotiations: Timely, uniform application of policies. These negotiations are subject to the impasse resolution procedures of the NSLRB. Additional instructions and requirements associated with multi-unit bargaining will be issued in Department implementing issuances. Unions may request to negotiate multi-unit agreements; however, the Department has sole and exclusive authority to grant the labor organizations' requests.

15. Collective Bargaining Above the Level of Recognition

This section describes procedures associated with negotiations above the level of exclusive recognition. The decision to negotiate at this level rests with the Secretary and is not subject to review or statutory third-party dispute resolution procedures. Such negotiations are subject to impasse resolution by the NSLRB and any agreement reached will be binding on all subordinate bargaining units and Components of the Department. Such agreements supersede conflicting provisions of existing collective bargaining agreements. Any agreement reached will not be subject to ratification as this unnecessarily delays implementation. Representatives participating in these negotiations are expected to come to the table with authority to bind their respective parties. These agreements, however, are subject to agency head review to ensure compliance with applicable law, rule, and regulation. Unions may request to negotiate at a level above recognition; however, the Department has sole and exclusive discretion to grant the labor organizations' requests.

Negotiations above the level of recognition will not apply to the National Guard Bureau and the Army and Air Force National Guard. Where these organizations are impacted by an agreement negotiated above the level of recognition, they may negotiate at the level of recognition, as provided in this subchapter.

16. Grievance Procedures

As a result of the decision of the Federal Circuit Court of Appeals in *Mudge* v. *U.S.*, 308 F.3d 1220 (Fed. Cir. 2002), DoD and OPM propose to modify 5 U.S.C. 7121(a)(1) by removing the term ''administrative'' from the second sentence of that subsection. In so doing, the proposed regulations make it clear that the negotiated grievance procedure is the only authorized procedure for resolving issues under its exclusive coverage. This modification is consistent with the Federal Circuit's decision in *Carter* v. *Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990), interpreting 5 U.S.C. 7121(a)(1) prior to its amendment in 1994. Under the regulations, matters excluded from the grievance procedure under 5 U.S.C. 7121(c) will remain excluded from coverage. The regulations codify the well-established interpretation that classification determinations are excluded from coverage. In addition, given the changes to the HR system, the proposed regulations exclude three additional matters from the negotiated grievance procedure—pay, ratings of record issued under subpart D of these regulations, and mandatory removal actions.

The Department recognizes that employees covered by subpart D should have a way to challenge ratings of record to ensure such ratings are accurate reflections of employees' performance and the performance management system is credible and transparent. Therefore, in subpart D of these proposed regulations, the Department and OPM have provided for the development of a formal process whereby employees covered by subpart D may seek reconsideration of their ratings of record issued under this system. Similarly, subpart H provides a procedure for seeking redress of removals based on mandatory removal offenses for employees covered by that subpart.

The proposed regulations continue to provide for arbitration of adverse actions that are otherwise appealable to MSPB. However, where a party covered by subpart H seeks review of an arbitrator's award involving an appealable matter, the arbitrator's award will be treated in the same manner as an initial decision by an MSPB AJ under procedures provided in that subpart; this allows an arbitrator's decision to be appealed to the full MSPB for review, rather than to the Federal Circuit directly.

17. Exceptions to Arbitration Awards

Exceptions to arbitrators' awards, except those involving appealable actions under subpart G, are filed with the NSLRB. As noted, exceptions involving appealable actions are filed either with the Federal Circuit or MSPB, as applicable, according to coverage under subpart H. In addition to bases contained in 5 U.S.C. 7122, exceptions may also be filed based on the

arbitrator's failure to properly consider the Department's national security mission or to comply with applicable NSPS regulations and DoD issuances. In reviewing exceptions, the NSLRB may determine its own jurisdiction without regard to whether any party has raised a jurisdictional issue.

18. Savings Provisions

Where a grievance or other administrative proceeding was already pending on the date of coverage of this subpart, the grievance or proceeding will continue to be processed in accordance with the rules under which it was initially filed. However, any remedy issued must be in compliance with the applicable provisions of this part.

Next Steps

The National Defense Authorization Act for Fiscal Year 2004 provides that the development and implementation of a new HR system for DoD will be carried out with the participation of, and in collaboration with, employee representatives. The Secretary and the Director must provide employee representatives with a written description of the proposed new or modified HR system. The description contained in this **Federal Register** notice satisfies this requirement. The Act further provides that employee representatives must be given 30 calendar days to review and make recommendations regarding the proposal. Any recommendations must be given full and fair consideration. If the Secretary and Director do not accept one or more recommendations, they must notify Congress of the disagreement and then meet and confer with employee representatives for at least 30 calendar days in an effort to reach agreement. The Federal Mediation and Conciliation Service may provide assistance at the Secretary's option, or if requested by a majority of employee representatives who have made recommendations.

If there is no objection to or recommendation on a proposal, it may be implemented immediately. Similarly, when the Secretary and the Director accept any recommendation from employee representatives, the revised proposal may be implemented immediately. If the Secretary and the Director do not fully accept a recommendation, the Secretary may implement the proposal (including any modifications made in response to the recommendations) at any time after 30 calendar days have elapsed since the initiation of congressional notification, consultation, and mediation procedures. To proceed with implementation in this circumstance, the Secretary must determine (in his/her sole and unreviewable discretion) that further consultation and mediation are unlikely to produce agreement. The Secretary must notify Congress promptly of the implementation of any such contested proposal.

The Secretary and the Director must develop a method under which each employee representative may participate in any further planning or development in connection with implementation of a proposal. Also, the Secretary and the Director must give each employee or representative adequate access to information to make that participation productive.

DoD plans to make the new labor relations provisions effective 30 days after the issuance of final regulations, and notification to Congress as required by the law. At this time, DoD intends to implement the new HR system in phases, or spirals. The tentative schedule for implementing the spirals is outlined as follows:

- In the first spiral, up to 300,000 General Schedule (GS and GM), Acquisition Demonstration Project, and certain alternative personnel system employees will be brought into the system through incremental deployments.
- After the assessment cycle and certification of the performance management system are completed, the second spiral will be deployed.
- Spiral two will consist of Federal Wage System employees, overseas employees, and all other eligible employees.

E.O. 12866, Regulatory Review

DoD and OPM have determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because there is a significant public interest in revisions of the Federal employment system. DoD and OPM have analyzed the expected costs and benefits of the proposed HR system to be adopted for DoD, and that analysis is presented below.

Among the NSPS design requirements is to build a system that is competitive, cost effective, and fiscally sound, while also being flexible, credible, and trusted. NSPS will bring many flexibilities and modern HR practices, including a movement towards market sensitive pay, pay increases based on performance rather than the passage of time, and the flexibility to offer competitive salaries. This requires striking a balance among the values of pay flexibility, valuing high performance, fiscal constraint, and credibility. While these flexibilities will improve DoD's ability to attract and retain a high-performing workforce, it is expected that actual payroll costs under this system will be constrained by the amount budgeted for overall DoD payroll expenditures, as is the case with the present GS pay system. DoD anticipates that accessions, separations, and promotions will net out and, as with the present system, not add to the overall cost of administering the system.

The implementation of NSPS will, however, result in some initial implementation costs, which can be expressed in two basic categories: (1) Program implementation costs and (2) NSLRB startup costs. The program implementation category refers to the costs associated with designing and implementing the system. This includes establishing and funding the operations of the Program Executive Office, executing the system design process, developing and delivering new training specifically for NSPS, conducting outreach to employees and other parties, engaging in collaboration activities with employee representatives, and modifying automated human resources information systems, including personnel and payroll transaction processing systems. In the areas of training and HR automated systems, the costs associated with implementing NSPS will not be extensive, since DoD has significant training and IT infrastructures in place for current operations. DoD will not have to build new systems or delivery mechanisms, but rather will modify existing systems and approaches to accommodate changes brought about by NSPS. The other cost category refers to the cost to establish the proposed National Security Labor Relations Board. This includes typical organizational stand-up costs, as well as staffing the NSLRB with members and a professional staff. It is expected that the NSLRB will develop streamlined processes and procedures and leverage existing infrastructures and technology to minimize startup and sustainment costs.

As has been the practice with implementing other alternative personnel systems, DoD expects to incur an initial payroll cost related to the conversion of employees to the pay banding system. This is often referred to as a within-grade increase (WGI) ''buyout,'' in which an employee's basic pay, upon conversion, is adjusted by the amount of the WGI earned to date. While this increase is paid earlier than scheduled, it represents a cost that would have been incurred under the current system at some point. However, under the NSPS proposed regulations,

WGIs no longer exist; once under NSPS, such pay increases will be based on performance. Accordingly, the total cost of the accelerated WGI ''buyout'' should not be treated as a ''new'' cost attributed to implementation of NSPS, since it is a cost that DoD would bear under the current HR system in the absence of NSPS authority and implementing regulations. The portion of the WGI buyout cost attributable to NSPS implementation is the marginal difference between paying out the earned portion of a WGI upon conversion and the cost of paying the same WGI according to the current schedule. In the absence of NSPS, WGIs would be spread out over time instead of being paid ''up front.'' The marginal cost of the accelerated payment of earned WGIs is difficult to estimate, but is not a significant factor in the benefit cost analysis for regulatory review purposes.

DoD estimates the overall costs associated with implementing the new DoD HR system—including the development and implementation of a new human resources management system and the creation of the NSLRB—will be approximately $158M through FY 2008. Less than $100 million will be spent in any 12-month period.

The primary benefit to the public of this new system resides in the HR flexibilities that will enable DoD to attract, build, and retain a high-performing workforce focused on effective and efficient mission accomplishment. A performance-based pay system that rewards excellent performance will result in a more qualified and proficient workforce and will generate a greater return on investment in terms of productivity and effectiveness. It is also expected that new flexibilities and improved processes in labor management relations, adverse actions, and appeals will result in more efficient and faster resolution of workplace and labor disputes, timelier and less costly bargaining processes, and quicker implementation of workplace changes needed to carry out the national security mission of the Department, while preserving basic employee rights. Taken as a whole, the changes included in these proposed regulations will result in a contemporary, merit-based HR system that focuses on performance, generates respect and trust, and supports the primary mission of DoD.

Regulatory Flexibility Act

DoD and OPM have determined that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This proposed regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

E.O. 12988, Civil Justice Reform

This proposed regulation is consistent with the requirements of E.O. 12988. The regulation clearly specifies the effects on existing Federal law or regulation; provides clear legal standards; has no retroactive effects; specifies procedures for administrative and court actions; defines key terms; and is drafted clearly.

E.O. 13132, Federalism

DoD and OPM have determined these proposed regulations would not have federalism implications because they would apply only to Federal agencies and employees. The proposed regulations would not have financial or other effects on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates

These proposed regulations would not result in the expenditure by State, local, or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

List of Subjects in 5 CFR Part 9901

Administrative practice and procedure, Government employees, Labor management relations, Labor unions, Reporting and recordkeeping requirements, Wages.

Department of Defense.

Donald Rumsfeld,

Secretary.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, under the authority of section 9902 of title 5, United States Code, the Department of Defense and the Office of Personnel Management are proposing to amend title 5, Code of Federal Regulations, by establishing chapter XCIX consisting of part 9901 as follows:

CHAPTER XCIX—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM (DEPARTMENT OF DEFENSE—OFFICE OF PERSONNEL MANAGEMENT)

PART 9901—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM

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Authority: 5 U.S.C. 9902.

Subpart A—General Provisions

§ 9901.101 Purpose.

(a) This part contains regulations governing the establishment of a new human resources management system within the Department of Defense (DoD), as authorized by 5 U.S.C. 9902. These regulations waive or modify various statutory provisions that would otherwise be applicable to affected DoD employees. These regulations are prescribed jointly by the Secretary of Defense and the Director of the Office of Personnel Management (OPM).

(b) The system established under this part is designed to meet a number of essential requirements for the implementation of a new human resources management system for DoD. The guiding principles for establishing these requirements are to put mission first; respect the individual; protect rights guaranteed by law, including the statutory merit system principles; value talent, performance, leadership, and commitment to public service; be flexible, understandable, credible, responsive, and executable; ensure accountability at all levels; balance human resources system interoperability with unique mission requirements; and be competitive and cost effective. The key operational characteristics and requirements of NSPS, which these regulations are designed to facilitate, are as follows: *High Performing Workforce and Management*—employees and supervisors are compensated and retained based on their performance and contribution to mission; *Agile and Responsive Workforce and Management*—workforce can be easily sized, shaped, and deployed to meet changing mission requirements; *Credible and Trusted*—system assures openness, clarity, accountability, and adherence to the public employment principles of merit and fitness; *Fiscally Sound*—aggregate increases in civilian payroll, at the appropriations level, will conform to OMB fiscal guidance; *Supporting Infrastructure*—information technology support, and training and change management plans are available and funded; and *Schedule*—NSPS will be operational and demonstrate success prior to November 2009.

§ 9901.102 Eligibility and coverage.

(a) Pursuant to the provisions of 5 U.S.C. 9902, all civilian employees of DoD are eligible for coverage under one or more of subparts B through I of this part, except to the extent specifically prohibited by law.

(b) At his or her sole and exclusive discretion, the Secretary may, subject to § 9901.105(b)—

(1) Establish the effective date for applying subpart I of this part to all eligible employees in accordance with 5 U.S.C. 9902(m); and

(2) With respect to subparts B through H of this part, apply these subparts to a specific category or categories of eligible civilian employees in organizations and functional units of the Department at any time in accordance with the provisions of 5 U.S.C. 9902. However, no category of employees may be covered by subparts B, C, E, F, G, or H of this part unless that category is also covered by subpart D of this part.

(c) Until the Secretary makes a determination under paragraph (b) of this section to apply the provisions of one or more subparts of this part to a particular category or categories of eligible employees in organizations and functional units, those employees, will continue to be covered by the applicable Federal laws and regulations that would apply to them in the absence of this part. All personnel actions affecting DoD employees will be based on the Federal laws and regulations applicable to them on the effective date of the action.

(d) Any new NSPS classification, pay, or performance management system covering Senior Executive Service (SES) members will be consistent with the policies and procedures established by the Governmentwide SES pay-for-performance framework authorized by 5 U.S.C. chapter 53, subchapter VIII, and applicable implementing regulations issued by OPM. If the Secretary determines that SES members employed by DoD should be covered by classification, pay, or performance management provisions that differ substantially from the Governmentwide SES pay-for-performance framework, the Secretary and the Director will issue joint regulations consistent with all of the requirements of 5 U.S.C. 9902.

(e) At his or her sole and exclusive discretion, the Secretary may rescind the application under paragraph (b) of this section of one or more subparts of this part to a particular category of employees and prescribe implementing issuances for converting that category of employees to coverage under applicable title 5 or other applicable provisions. DoD will notify affected employees and labor organizations in advance of a decision to rescind the application of one or more subparts of this part to them.

(f)(1) Notwithstanding any other provision of this part, but subject to the following conditions, the Secretary may, at his or her sole and exclusive discretion, apply one or more subparts of this part as of a specific effective date to a category of employees in organizations and functional units not currently eligible for coverage because of coverage under a system established by a provision of law outside the waivable or modifiable chapters of title 5, U.S. Code, if the provision of law outside those waivable or modifiable title 5 chapters provides discretionary authority to cover employees under a given waivable or modifiable title 5 chapter or to cover them under a separate system established by the Department.

(2) In applying paragraph (f)(1) of this section with respect to coverage under subparts B and C of this part, the affected employees will be converted directly to the DoD NSPS pay system from their current pay system. The Secretary may establish conversion rules for these employees similar to the conversion rules established under § 9901.373.

§ 9901.103 Definitions.

In this part:

Band means *pay band.*

Basic pay means an employee's rate of pay before any deductions and exclusive of additional pay of any kind, except as expressly provided by law or regulation. For the specific purposes prescribed in § 9901.332(c), basic pay includes any local market supplement.

Career group means a grouping of one or more associated or related occupations. A career group may include one or more pay schedules.

Competencies means the measurable or observable knowledge, skills, abilities, behaviors, and other characteristics that an individual needs to perform a particular job or job function successfully.

Contribution means a work product, service, output, or result provided or produced by an employee or group of employees that supports the Departmental or organizational mission, goals, or objectives.

Day means a calendar day.

Department or *DoD* means the Department of Defense.

Director means the Director of the Office of Personnel Management.

Employee means an employee within the meaning of that term in 5 U.S.C. 2105.

Furlough means the placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

General Schedule or *GS* means the General Schedule classification and pay system established under chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code.

Implementing issuances means documents issued at the Departmental level by the Secretary to carry out any policy or procedure established in accordance with this part. These issuances may apply Department-wide or to any part of DoD as determined by the Secretary at his or her sole and exclusive discretion.

Mandatory removal offense (MRO) means an offense that the Secretary determines in his or her sole, exclusive, and unreviewable discretion has a direct and substantial adverse impact on the Department's national security mission.

National Security Personnel System (NSPS) means the human resources management system authorized by 5 U.S.C. 9902(a). It may also refer to the labor relations system authorized by 5 U.S.C. 9902(m).

Occupational series means a group or family of positions performing similar types of work. Occupational series are assigned a number for workforce information purposes (for example: 0110, Economist Series; 1410, Librarian Series).

OPM means the Office of Personnel Management.

Pay band or *band* means a work level and associated pay range within a pay schedule.

Pay schedule means a set of related pay bands for a specified category of employees within a career group.

Performance means accomplishment of work assignments or responsibilities and contribution to achieving organizational goals, including an employee's behavior and professional demeanor (actions, attitude, and manner of performance), as demonstrated by his or her approach to completing work assignments.

Promotion means the movement of an employee from one pay band to a higher pay band under DoD implementing issuances. This includes movement of an employee currently covered by a non-NSPS Federal personnel system to a position determined to be at a higher level of work in NSPS.

Rating of record means a performance appraisal prepared—

(1) At the end of an appraisal period covering an employee's performance of assigned duties against performance expectations over the applicable period; or

(2) As needed to reflect a substantial and sustained change in the employee's performance since the last rating of record as provided in DoD implementing issuances.

Reassignment means the movement of an employee from his or her position of record to a different position or set of duties in the same or a comparable pay band under DoD implementing issuances on a permanent or temporary/time-limited basis. This includes the movement of an employee between

positions at a comparable level of work in NSPS and a non-NSPS Federal personnel system.

Reduction in band means the voluntary or involuntary movement of an employee from one pay band to a lower pay band under DoD implementing issuances. This includes movement of an employee currently covered by a non-NSPS Federal personnel system to a position determined to be at a lower level of work in NSPS.

Secretary means the Secretary of Defense.

SES means the Senior Executive Service established under 5 U.S.C. chapter 31, subchapter II.

SL/ST refers to an employee serving in a senior-level position paid under 5 U.S.C. 5376. The term ''SL'' identifies a senior-level employee covered by 5 U.S.C. 3324 and 5108. The term ''ST'' identifies an employee who is appointed under the special authority in 5 U.S.C. 3325 to a scientific or professional position established under 5 U.S.C. 3104.

Unacceptable performance means the failure to meet one or more performance expectations.

§ 9901.104 Scope of authority.

The authority for this part is 5 U.S.C. 9902. The provisions in the following chapters of title 5, U.S. Code, and any related regulations, may be waived or modified in exercising the authority in 5 U.S.C. 9902:

(a) Chapters 31, 33, and 35, dealing with staffing, employment, and workforce shaping (as authorized by 5 U.S.C. 9902(k));

(b) Chapter 43, dealing with performance appraisal systems;

(c) Chapter 51, dealing with General Schedule job classification;

(d) Chapter 53, dealing with pay for General Schedule employees, pay and job grading for Federal Wage System employees, and pay for certain other employees;

(e) Chapter 55, subchapter V, dealing with premium pay, except section 5545b;

(f) Chapter 71, dealing with labor relations (as authorized by 5 U.S.C. 9902(m));

(g) Chapter 75, dealing with adverse actions and certain other actions; and

(h) Chapter 77, dealing with the appeal of adverse actions and certain other actions.

§ 9901.105 Coordination with OPM.

(a) As specified in paragraphs (b) through (e) of this section, the Secretary will advise and/or coordinate with OPM in advance, as applicable, regarding the proposed promulgation of certain DoD implementing issuances and certain other actions related to the ongoing operation of the NSPS where such actions could have a significant impact on other Federal agencies and the Federal civil service as a whole. Such pre-decisional coordination is intended as an internal DoD/OPM matter to recognize the Secretary's special authority to direct the operations of the Department of Defense pursuant to title 10, U.S. Code, as well as the Director's institutional responsibility to oversee the Federal civil service system pursuant to 5 U.S.C. chapter 11.

(b) DoD will advise OPM in advance regarding the extension of specific subparts of this part to specific categories of DoD employees under § 9901.102(b).

(c) Subpart B of this part authorizes DoD to establish and administer a position classification system and classify positions covered by the NSPS; in so doing, DoD will coordinate with OPM prior to—

(1) Establishing or substantially revising career groups, occupational pay schedules, and pay bands under §§ 9901.211 and 9901.212(a);

(2) Establishing alternative or additional qualification standards for a particular occupational series, career group, occupational pay schedule, and/or pay band under § 9901.212(d) or 9901.513 that significantly differ from Governmentwide standards;

(3) Establishing alternative or additional occupational series for a particular career group or occupation under § 9901.221(b)(1) that differ from Governmentwide series and/or standards;

(4) Establishing alternative or additional classification standards for a particular career group or occupation under § 9901.221(b)(1) that differ from Governmentwide classification standards; and

(5) Establishing the process by which DoD employees may request reconsideration of DoD classification decisions by the Department under § 9901.222, to ensure compatibility between DoD and OPM procedures.

(d) Subpart C of this part authorizes DoD to establish and administer a compensation system for employees of the Department covered by the NSPS; in so doing, DoD will coordinate with OPM prior to—

(1) Establishing maximum rates of basic pay and aggregate pay under § 9901.312 that exceed those established under 5 U.S.C. chapter 53;

(2) Establishing and adjusting pay ranges for occupational pay schedules and pay bands under §§ 9901.321(a), 9901.322(a) and (b), and 9901.372;

(3) Establishing and adjusting local market supplements under §§ 9901.332(a) and 9901.333;

(4) Establishing alternative or additional local market areas under § 9901.332(b) that differ from those established for General Schedule employees under 5 CFR 531.603;

(5) Establishing policies regarding starting rates of pay for newly appointed or transferred employees under §§ 9901.351 through 9901.354 and pay retention under § 9901.355;

(6) Establishing policies regarding premium pay under § 9901.361 that differ from those that exist in Governmentwide regulations; and

(7) Establishing policies regarding the student loan repayment program under § 9901.303(c) that differ from Governmentwide policies with respect to repayment amounts, service commitments, and reimbursement.

(e) Subpart E of this part authorizes DoD to establish and administer authorities for the examination and appointment of employees to certain organizational elements of the Department covered by the NSPS; in so doing, DoD will coordinate with OPM prior to establishing alternative or additional examining procedures under § 9901.515 that differ from those applicable to the examination of applicants for appointment to the competitive and excepted service under 5 U.S.C. chapters 31 and 33, except as otherwise provided by subpart E of this part.

(f) When a matter requiring OPM coordination is submitted to the Secretary for decision, the Director will be provided an opportunity, as part of the Department's normal coordination process, to review and comment on the recommendations and officially concur or nonconcur with all or part of them. The Secretary will take the Director's comments and concurrence/nonconcurrence into account, advise the Director of his or her determination, and provide the Director with reasonable advance notice of its effective date. Thereafter, the Secretary and the Director may take such action(s) as they deem appropriate, consistent with their respective statutory authorities and responsibilities.

(g) The Secretary and the Director fully expect their staffs to work closely together on the matters specified in this section, before such matters are submitted for official OPM coordination and DoD decision, so as to maximize the opportunity for consensus and agreement before an issue is so submitted.

§ 9901.106 Continuing collaboration.

(a) *Continuing collaboration with employee representatives.* (1) In accordance with 5 U.S.C. 9902, this section provides employee representatives with an opportunity to participate in the development of Department-level implementing issuances that carry out the provisions of this part. This process is not subject to the requirements established by subpart I of this part, including but not limited to §§ 9901.910 (regarding the exercise of management rights), 9901.916(a)(5) (regarding enforcement of the duty to consult or negotiate), 9901.917 (regarding the duty to bargain and consult), and 9901.920 (regarding impasse procedures).

(2)(i) For the purpose of this section, the term ''employee representatives'' includes representatives of labor organizations with exclusive recognition rights for units of DoD employees, as determined pursuant to subpart I of this part.

(ii) The Secretary, at his or her sole and exclusive discretion, may determine the number of employee representatives to be engaged in the continuing collaboration process.

(iii) Each national labor organization with multiple collective bargaining units accorded exclusive recognition will determine how its units will be represented within the limitations imposed by the Secretary under paragraph (a)(2)(ii) of this section.

(3)(i) Within timeframes specified by the Secretary, employee representatives will be provided with an opportunity to submit written comments to, and to discuss their views with, DoD officials on any proposed final draft implementing issuances.

(ii) To the extent that the Secretary determines necessary, employee representatives will be provided with an opportunity to discuss their views with DoD officials and/or to submit written comments, at initial identification of implementation issues and conceptual design and/or at review of draft recommendations or alternatives.

(4) Employee representatives will be provided with access to information to make their participation in the continuing collaboration process productive.

(5) Any written comments submitted by employee representatives regarding proposed final draft implementing issuances will become part of the record and will be considered before a final decision is made.

(6) Nothing in the continuing collaboration process will affect the right of the Secretary to determine the content of implementing issuances and to make them effective at any time.

(b) *Continuing collaboration with other interested organizations.* The Secretary may also establish procedures for continuing collaboration with appropriate organizations that represent the interests of a substantial number of nonbargaining unit employees.

§ 9901.107 Relationship to other provisions.

(a)(1) The provisions of title 5, U.S. Code, are waived, modified, or replaced to the extent authorized by 5 U.S.C. 9902 to conform to the provisions of this part.

(2) This part must be interpreted in a way that recognizes the critical national security mission of the Department. Each provision of this part must be construed to promote the swift, flexible, effective day-to-day accomplishment of this mission, as defined by the Secretary. The interpretation of the regulations in this part by DoD and OPM must be accorded great deference.

(b) For the purpose of applying other provisions of law or Governmentwide regulations that reference provisions under chapters 31, 33, 35, 43, 51, 53, 55 (subchapter V only), 71, 75, and 77 of title 5, U.S. Code, the referenced provisions are not waived but are modified consistent with the corresponding regulations in this part, except as otherwise provided in this part (including paragraph (c) of this section) or in DoD implementing issuances. Applications of this rule include, but are not limited to, the following:

(1) If another provision of law or Governmentwide regulations requires coverage under one of the chapters modified or waived under this part (*i.e.*, chapters 31, 33, 35, 43, 51, 53, 55 (subchapter V only), 71, 75, and 77 of title 5, U.S. Code), DoD employees are deemed to be covered by the applicable chapter notwithstanding coverage under a system established under this part. Selected examples of provisions that continue to apply to any DoD employees (notwithstanding coverage under subparts B through I of this part) include, but are not limited to, the following:

(i) Foreign language awards for law enforcement officers under 5 U.S.C. 4521 through 4523;

(ii) Pay for firefighters under 5 U.S.C. 5545b;

(iii) Recruitment, relocation, and retention payments under 5 U.S.C. 5753 through 5754; and

(iv) Physicians' comparability allowances under 5 U.S.C. 5948.

(2) In applying the back pay law in 5 U.S.C. 5596 to DoD employees covered by subpart H of this part (dealing with appeals), the reference in section 5596(b)(1)(A)(ii) to 5 U.S.C. 7701(g) (dealing with attorney fees) is considered to be a reference to a modified section 7701(g) that is consistent with § 9901.807(h).

(3) In applying the back pay law in 5 U.S.C. 5596 to DoD employees covered by subpart I of this part (dealing with labor relations), the reference in section 5596(b)(5) to section 7116 (dealing with unfair labor practices) is considered to be a reference to a modified section 7116 that is consistent with § 9901.916.

(c) Law enforcement officer special rates and geographic adjustments under sections 403 and 404 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Pub. L. 101–509) do not apply to employees who are covered by an NSPS classification and pay system established under subparts B and C of this part.

(d) Nothing in this part waives, modifies or otherwise affects the employment discrimination laws that the Equal Employment Opportunity Commission (EEOC) enforces under 42 U.S.C. 2000e *et seq.*, 29 U.S.C. 621 *et seq.*, 29 U.S.C. 791 *et seq.*, and 29 U.S.C. 206(d). Employees and applicants for employment in DoD will continue to be covered by EEOC's Federal sector regulations found at 29 CFR part 1614.

§ 9901.108 Program evaluation.

(a) DoD will establish procedures for evaluating the regulations in this part and their implementation. DoD will provide designated employee representatives with an opportunity to be briefed and a specified timeframe to provide comments on the design and results of program evaluations.

(b) Involvement in the evaluation process does not waive the rights of any party under applicable law or regulations.

Subpart B—Classification

General

§ 9901.201 Purpose.

(a) This subpart contains regulations establishing a classification structure and rules for covered DoD employees and positions to replace the classification structure and rules in 5 U.S.C. chapter 51 and the job grading system in 5 U.S.C. chapter 53, subchapter IV, in accordance with the merit principle that equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and

appropriate incentives and recognition should be provided for excellence in performance.

(b) Any classification system prescribed under this subpart will be established in conjunction with the pay system described in subpart C of this part.

§ 9901.202 Coverage.

(a) This subpart applies to eligible DoD employees and positions listed in paragraph (b) of this section, subject to a determination by the Secretary under § 9901.102(b)(2).

(b) The following employees of, or positions in, DoD organizational and functional units are eligible for coverage under this subpart:

(1) Employees and positions that would otherwise be covered by the General Schedule classification system established under 5 U.S.C. chapter 51;

(2) Employees and positions that would otherwise be covered by a prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV;

(3) Employees in senior-level (SL) and scientific or professional (ST) positions who would otherwise be covered by 5 U.S.C. 5376;

(4) Members of the Senior Executive Service (SES) who would otherwise be covered by 5 U.S.C. chapter 53, subchapter VIII, subject to § 9901.102(d); and

(5) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.

§ 9901.203 Waivers.

(a) When a specified category of employees is covered by a classification system established under this subpart, the provisions of 5 U.S.C. chapter 51 and 5 U.S.C. 5346 are waived with respect to that category of employees, except as provided in paragraph (b) of this section, §§ 9901.107, and 9901.222(d) (with respect to OPM's authority under 5 U.S.C. 5112(b) and 5346(c) to act on requests for review of classification decisions).

(b) Section 5108 of title 5, U.S. Code, dealing with the classification of positions above GS–15, is not waived for the purpose of defining and allocating senior executive service positions under 5 U.S.C. 3132 and 3133 or applying provisions of law outside the waivable and modifiable chapters of title 5, U.S. Code—*e.g.*, 5 U.S.C. 4507 and 4507a (regarding Presidential rank awards) and 5 U.S.C. 6303(f) (regarding annual leave accrual for members of the SES and employees in SL/ST positions).

§ 9901.204 Definitions.

In this subpart:

Band means *pay band.*

Basic pay has the meaning given that term in § 9901.103.

Career group has the meaning given that term in § 9901.103.

Classification, also referred to as job evaluation, means the process of analyzing and assigning a job or position to an occupational series, career group, pay schedule, and pay band for pay and other related purposes.

Competencies has the meaning given that term in § 9901.103.

Occupational series has the meaning given that term in § 9901.103.

Pay band or *band* has the meaning given that term in § 9901.103.

Pay schedule has the meaning given that term in § 9901.103.

Position or *job* means the duties, responsibilities, and related competency requirements that are assigned to an employee whom the Secretary approves for coverage under § 9901.202(a).

Classification Structure

§ 9901.211 Career groups.

For the purpose of classifying positions, DoD may establish career groups based on factors such as mission or function; nature of work; qualifications or competencies; career or pay progression patterns; relevant labor-market features; and other characteristics of those occupations or positions. DoD will document in implementing issuances the criteria and rationale for grouping occupations or positions into career groups.

§ 9901.212 Pay schedules and pay bands.

(a) For purposes of identifying relative levels of work and corresponding pay ranges, DoD may establish one or more pay schedules within each career group.

(b) Each pay schedule may include two or more pay bands.

(c) DoD will document in implementing issuances the definitions for each pay band which specify the type and range of difficulty and responsibility; qualifications or competencies; or other characteristics of the work encompassed by the pay band.

(d) DoD will designate qualification standards and requirements for each career group, occupational series, pay schedule, and/or pay band, as provided in § 9901.514.

Classification Process

§ 9901.221 Classification requirements.

(a) DoD will develop a methodology for describing and documenting the duties, qualifications, and other requirements of categories of jobs, and DoD will make such descriptions and documentation available to affected employees.

(b) DoD will—

(1) Assign occupational series to jobs consistent with occupational series definitions established by OPM under 5 U.S.C. 5105 and 5346, or by DoD; and

(2) Apply the criteria and definitions required by §§ 9901.211 and 9901.212 to assign jobs to an appropriate career group, pay schedule, and pay band.

(c) DoD will establish procedures for classifying jobs and may make such inquiries of the duties, responsibilities, and qualification requirements of jobs as it considers necessary for the purpose of this section.

(d) Classification decisions become effective on the date an authorized official approves the classification. Except as provided for in § 9901.222(b), such decisions will be applied prospectively and do not convey any retroactive entitlements.

§ 9901.222 Reconsideration of classification decisions.

(a) An individual employee may request that DoD or OPM reconsider the classification (*i.e.*, pay system, career group, occupational series, pay schedule, or pay band) of his or her official position of record at any time.

(b) DoD will establish implementing issuances for reviewing requests for reconsideration. Such issuances will include a provision stating that a retroactive effective date may be required only if the employee is wrongfully reduced in band.

(c) An employee may request OPM to review a DoD determination made under paragraph (a) of this section. If an employee does not request an OPM reconsideration decision, DoD's classification determination is final and not subject to further review or appeal.

(d) OPM's final determination on a request made under this section is not subject to further review or appeal.

(e) Any determination made under this section will be based on criteria issued by DoD or, where DoD has adopted an OPM classification standard, criteria issued by OPM.

Transitional Provisions

§ 9901.231 Conversion of positions and employees to the NSPS classification system.

(a) This section describes the transitional provisions that apply when DoD positions and employees are converted to a classification system established under this subpart. Affected positions and employees may convert from the GS system, a prevailing rate system, the SL/ST system, the SES system, or such other DoD systems as may be designated by the Secretary, as provided in § 9901.202. For the purpose

of this section, the terms ''convert,'' ''converted,'' ''converting,'' and ''conversion'' refer to positions and employees that become covered by the NSPS classification system as a result of a coverage determination made under § 9901.102(b)(2) and exclude employees who are reassigned or transferred from a noncovered position to a position already covered by the DoD system.

(b) DoD will issue implementing issuances prescribing policies and procedures for converting DoD employees to a pay band upon initial implementation of the NSPS classification system. Such procedures will include provisions for converting an employee who is retaining a grade under 5 U.S.C. chapter 53, subchapter VI, immediately prior to conversion. As provided in § 9901.373, DoD will convert employees to the system without a reduction in their rate of pay (including basic pay and any applicable locality payment under 5 U.S.C. 5304, special rate under 5 U.S.C. 5305, or local market supplement under § 9901.332).

Subpart C—Pay and Pay Administration

General

§ 9901.301 Purpose.

(a) This subpart contains regulations establishing pay structures and pay administration rules for covered DoD employees to replace the pay structures and pay administration rules established under 5 U.S.C. chapter 53 and 5 U.S.C. chapter 55, subchapter V, as authorized by 5 U.S.C. 9902. Various features that link pay to employees' performance ratings are designed to promote a high-performance culture within DoD.

(b) Any pay system prescribed under this subpart will be established in conjunction with the classification system described in subpart B of this part.

(c) Any pay system prescribed under this subpart will be established in conjunction with the performance management system described in subpart D of this part.

§ 9901.302 Coverage.

(a) This subpart applies to eligible DoD employees and positions in the categories listed in paragraph (b) of this section, subject to a determination by the Secretary under § 9901.102(b)(2).

(b) The following employees of, or positions in, DoD organizational and functional units are eligible for coverage under this subpart:

(1) Employees and positions who would otherwise be covered by the General Schedule pay system established under 5 U.S.C. chapter 53, subchapter III;

(2) Employees and positions who would otherwise be covered by a prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV;

(3) Employees in senior-level (SL) and scientific or professional (ST) positions who would otherwise be covered by 5 U.S.C. 5376;

(4) Members of the Senior Executive Service (SES) who would otherwise be covered by 5 U.S.C. chapter 53, subchapter VIII, subject to § 9901.102(d); and

(5) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.

(c) This section does not apply in determining coverage under § 9901.361 (dealing with premium pay).

§ 9901.303 Waivers.

(a) When a specified category of employees is covered under this subpart—

(1) The provisions of 5 U.S.C. chapter 53 are waived with respect to that category of employees, except as provided in § 9901.107 and paragraphs (b) through (c) of this section; and

(2) The provisions of 5 U.S.C. chapter 55, subchapter V (except section 5545b), are waived with respect to that category of employees to the extent provided by the Secretary when approving coverage under § 9901.361.

(b) The following provisions of 5 U.S.C. chapter 53 are not waived:

(1) Sections 5311 through 5318, dealing with Executive Schedule positions;

(2) Section 5371, insofar as it authorizes OPM to apply the provisions of 38 U.S.C. chapter 74 to DoD employees in health care positions covered by section 5371 in lieu of any NSPS pay system established under this subpart or the following provisions of title 5, U.S. Code: chapters 51, 53, and 61, and subchapter V of chapter 55. The reference to ''chapter 51'' in section 5371 is deemed to include a classification system established under subpart B of this part; and

(3) Section 5377, dealing with the critical pay authority.

(c) Section 5379 is modified. DoD may establish and administer a student loan repayment program for DoD employees, except that DoD may not make loan payments for any noncareer appointee in the SES (as defined in 5 U.S.C. 3132(a)(7)) or for any employee occupying a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character. Notwithstanding § 9901.302(a), any DoD employee otherwise covered by section 5379 is eligible for coverage under the provisions established under this paragraph, subject to a determination by the Secretary under § 9901.102(b)(2).

§ 9901.304 Definitions.

In this part:

Band means *pay band.*

Band rate range means the range of rates of basic pay (excluding any local market supplements) applicable to employees in a particular pay band, as described in § 9901.321. Each band rate range is defined by a minimum and maximum rate.

Basic pay has the meaning given that term in § 9901.103.

Bonus means an element of the performance payout that consists of a one-time lump-sum payment made to employees. It is not part of basic pay.

Career group has the meaning given that term in § 9901.103.

Competencies has the meaning given that term in § 9901.103.

Contribution has the meaning given that term in § 9901.103.

Contribution assessment means the determination made by the pay pool manager as to the impact, extent, and scope of contribution that the employee's performance made to the accomplishment of the organization's mission and goals.

CONUS or *Continental United States* means the States of the United States, excluding Alaska and Hawaii, but including the District of Columbia.

Extraordinary pay increase or *EPI* means a discretionary basic pay increase to reward an employee at the highest performance level who has been assigned the maximum number of shares available under the rating and contribution scheme when the payout formula does not adequately compensate them for the employee's extraordinary performance and contribution, as described in § 9901.344(b).

Local market supplement means a geographic- and occupation-based supplement to basic pay, as described in § 9901.332.

Modal rating means the rating of record that occurs most frequently in a particular pay pool level.

Pay band or *band* has the meaning given that term in § 9901.103.

Pay pool means the organizational elements/units or other categories of employees that are combined for the purpose of determining performance payouts. Each employee is in only one pay pool at a time. *Pay pool* also means the dollar value of the funds set aside

for performance payouts for employees covered by a pay pool.

Pay schedule has the meaning given that term in § 9901.103.

Performance has the meaning given that term in § 9901.103.

Performance payout means the total monetary value of performance pay increase and bonus resulting from the performance appraisal process and contribution assessment.

Performance share means a unit of performance payout awarded to an employee based on performance. Performance shares may be awarded in multiples commensurate with the employee's performance and contribution rating level.

Performance share value means a calculated value for each performance share based on pay pool funds available and the distribution of performance shares across employees within a pay pool, expressed as a percentage or fixed dollar amount.

Promotion has the meaning given that term in § 9901.103.

Rating of record has the meaning given that term in § 9901.103.

Reassignment has the meaning given that term in § 9901.103.

Reduction in band has the meaning given that term in § 9901.103.

Unacceptable performance has the meaning given that term in § 9901.103.

Overview of Pay System

§ 9901.311 Major features.

Through the issuance of implementing issuances, DoD will establish a pay system that governs the setting and adjusting of covered employees' rates of pay and the setting of covered employees' rates of premium pay. The NSPS pay system will include the following features:

(a) A structure of rate ranges linked to various pay bands for each career group, in alignment with the classification structure described in subpart B of this part;

(b) Policies regarding the setting and adjusting of band rate ranges based on mission requirements, labor market conditions, and other factors, as described in §§ 9901.321 and 9901.322;

(c) Policies regarding the setting and adjusting of local market supplements to basic pay based on local labor market conditions and other factors, as described in §§ 9901.331 through 9901.333;

(d) Policies regarding employees' eligibility for pay increases based on adjustments in rate ranges and supplements, as described in §§ 9901.323 and 9901.334;

(e) Policies regarding performance-based pay, as described in §§ 9901.341 through 9901.345;

(f) Policies on basic pay administration, including movement between career groups; positions, pay schedules, and pay bands, as described in §§ 9901.351 through 9901.356;

(g) Linkages to employees' performance ratings of record, as described in subpart D of this part; and

(h) Policies regarding the setting of and limitations on premium payments, as described in § 9901.361.

§ 9901.312 Maximum rates.

The Secretary will establish limitations on maximum rates of basic pay and aggregate pay for covered employees.

§ 9901.313 National security compensation comparability.

(a) To the maximum extent practicable, for fiscal years 2004 through 2008, the overall amount allocated for compensation of the DoD civilian employees who are included in the NSPS may not be less than the amount that would have been allocated for compensation of such employees for such fiscal years if they had not been converted to the NSPS, based on at a minimum—

(1) The number and mix of employees in such organizational or functional units prior to conversion of such employees to the NSPS; and

(2) Adjustments for normal step increases and rates of promotion that would have been expected, had such employees remained in their previous pay schedule.

(b) To the maximum extent practicable, DoD implementing issuances for the NSPS will provide a formula for calculating the overall amount to be allocated for fiscal years beyond fiscal year 2008 for compensation of the civilian employees included in the NSPS. The formula will ensure that in the aggregate employees are not disadvantaged in terms of the overall amount of pay available as a result of conversion to the NSPS, while providing flexibility to accommodate changes in the function of the organization and other changed circumstances that might impact pay levels.

(c) For the purpose of this section, ''compensation'' for civilian employees means basic pay and any geographic-based payments that are basic pay for retirement purposes (*e.g.*, NSPS local market supplements).

Setting and Adjusting Rate Ranges

§ 9901.321 Structure.

(a) DoD may establish ranges of basic pay for pay bands, with minimum and maximum rates set and adjusted as provided in § 9901.322.

(b) For each pay band within a career group, DoD will establish a common rate range that applies in all locations.

§ 9901.322 Setting and adjusting rate ranges.

(a) Within its sole and exclusive discretion, DoD may, subject to § 9901.105(d)(2), set and adjust the rate ranges established under § 9901.321. In determining the rate ranges, DoD may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies, and any other relevant factors.

(b) DoD may determine the effective date of newly set or adjusted band rate ranges.

(c) DoD may establish different rate ranges and provide different rate range adjustments for different pay bands.

(d) DoD may adjust the minimum and maximum rates of a pay band by different percentages.

§ 9901.323 Eligibility for pay increase associated with a rate range adjustment.

(a) Except for employees receiving a retained rate under § 9901.355, employees with a current rating of record above ''unacceptable'' will receive a percentage increase in basic pay equal to the percentage by which the minimum of their rate range is increased.

(b) Employees with a current rating of record of ''unacceptable'' will not receive a pay increase under this section.

(c) For employees who do not have a current rating of record, DoD will determine the amount of any pay increase associated with a rate range adjustment in accordance with implementing issuances.

Local Market Supplements

§ 9901.331 General.

The basic pay ranges established under §§ 9901.321 through 9901.323 may be supplemented in appropriate circumstances by local market supplements, as described in §§ 9901.332, 9901.333, and 9901.334. These supplements are expressed as a percentage of basic pay and are set and adjusted as described in § 9901.333. As authorized by § 9901.355, DoD implementing issuances will determine the extent to which §§ 9901.332 through 9901.334 apply to employees receiving a retained rate.

§ 9901.332 Local market supplements.

(a) For each band rate range, DoD may establish local market supplements that apply in specified local market areas. Local market supplements apply to employees whose official duty station is located in the given area. DoD may provide different local market supplements for different career groups or for different occupations and/or pay bands within the same career group in the same local market area.

(b) For the purpose of establishing and modifying local market areas, 5 U.S.C. 5304 is not waived. A DoD decision to use the local market area boundaries based on locality pay rates established under 5 U.S.C. 5304 does not require separate DoD regulations. DoD may, in accordance with 5 U.S.C. 553, issue regulations that establish and adjust different local market areas within CONUS or establish and adjust new local market areas outside CONUS. As provided by 5 U.S.C. 5304(f)(2)(B), judicial review of any DoD regulation regarding the establishment or adjustment of local market areas is limited to whether or not the regulation was promulgated in accordance with 5 U.S.C. 553.

(c) Local market supplements are considered basic pay for only the following purposes:

(1) Retirement under 5 U.S.C. chapter 83 or 84;

(2) Life insurance under 5 U.S.C. chapter 87;

(3) Premium pay under 5 U.S.C. chapter 55, subchapter V, or similar payments under other legal authority, including this subpart;

(4) Severance pay under 5 U.S.C. 5595;

(5) Cost-of-living allowances and post differentials under 5 U.S.C. 5941;

(6) Overseas allowances and differentials under 5 U.S.C. chapter 59, subchapter III, to the extent authorized by the Department of State;

(7) Other payments and adjustments authorized under this subpart as specified by DoD implementing issuances;

(8) Other payments and adjustments under other statutory or regulatory authority that are basic pay for the purpose of locality-based comparability payments under 5 U.S.C. 5304;

(9) Determining the rate of basic pay upon conversion to the NSPS pay system as provided in § 9901.373(b); and

(10) Any provisions for which DoD local market supplements are treated as basic pay by law.

§ 9901.333 Setting and adjusting local market supplements.

(a) Within its sole and exclusive discretion, DoD may, subject to § 9901.105(d)(3), set and adjust local market supplements. In determining the amounts of the supplements, DoD will consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies, allowances and differentials under 5 U.S.C. chapter 59, and any other relevant factors.

(b) DoD may determine the effective date of newly set or adjusted local market supplements. Established supplements will be reviewed for possible adjustment at least annually in conjunction with rate range adjustments under § 9901.322.

§ 9901.334 Eligibility for pay increase associated with a supplement adjustment.

(a) When a local market supplement is adjusted under § 9901.333, employees to whom the supplement applies with a current rating of record above ''unacceptable'' will receive any pay increase resulting from that adjustment.

(b) Employees with a current rating of record of ''unacceptable'' will not receive a pay increase under this section.

(c) For employees who do not have a current rating of record, DoD will determine the amount of any pay increase under this section in accordance with implementing issuances.

Performance-Based Pay

§ 9901.341 General.

Sections 9901.342 through 9901.345 describe the performance-based pay that is part of the pay system established under this subpart. These provisions are designed to provide DoD with the flexibility to allocate available funds to employees based on individual, team, or organizational performance as a means of fostering a high-performance culture that supports mission accomplishment.

§ 9901.342 Performance payouts.

(a) *Overview.* (1) The NSPS pay system will be a pay-for-performance system and, when implemented, will result in a distribution of available performance pay funds based upon individual performance, individual contribution, organizational performance, or a combination of those elements. The NSPS pay system will use a pay pool concept to manage, control, and distribute performance-based pay increases and bonuses. The performance payout is a function of the amount of money in the performance pay pool and the number of shares assigned to individual employees.

(2) The rating of record used as the basis for a performance pay increase is the one assigned for the most recently completed appraisal period, except that if an appropriate rating official determines that an employee's current performance is inconsistent with that rating, that rating official may prepare a more current rating of record, consistent with § 9901.409(b). Unless otherwise provided in implementing issuances, if an employee is not eligible to have a rating of record for the current rating cycle for reasons other than those identified in paragraphs (f) and (g), such employee will not be eligible for a pay increase or bonus payment under this part.

(b) *Performance pay pools.* (1) DoD will issue implementing issuances for the establishment and management of pay pools for performance payouts.

(2) DoD may determine a percentage of pay to be included in pay pools and paid out in accordance with accompanying DoD implementing issuances as—

(i) A performance-based pay increase;

(ii) A performance-based bonus; or

(iii) A combination of a performance-based pay increase and a performance-based bonus.

(c) *Performance shares.* (1) DoD will issue implementing issuances regarding the assignment of a number or range of shares for each rating of record level, subject to paragraph (c)(2) of this section. Performance shares will be used to determine performance pay increases and/or bonuses.

(2) Employees with unacceptable ratings of record will be assigned zero shares.

(d) *Performance payout.* (1) DoD will establish a methodology that authorized officials will use to determine the value of a performance share. A performance share may be expressed as a percentage of an employee's rate of basic pay (exclusive of local market supplements under § 9901.332) or as a fixed dollar amount, or both.

(2) To determine an individual employee's performance payout, DoD will multiply the share value determined under paragraph (d)(1) of this section by the number of performance shares assigned to the employee.

(3) DoD may provide for the establishment of control points within a band that limit increases in the rate of basic pay. DoD may require that certain criteria be met for increases above a control point.

(4) A performance payout may be an increase in basic pay, a bonus, or a

combination of the two. However, an increase in basic pay may not cause the employee's rate of basic pay to exceed the maximum rate or applicable control point of the employee's band rate range. Implementing issuances will provide guidance for determining the payout amount and the appropriate distribution between basic pay and bonus.

(5) DoD will determine the effective date(s) of increases in basic pay made under this section.

(6) Notwithstanding any other provision of this section, DoD will issue implementing issuances to address the circumstances under which an employee receiving a retained rate under § 9901.355 may receive a lump-sum performance payout.

(e) *Proration of performance payouts.* DoD will issue implementing issuances regarding the proration of performance payouts for employees who, during the period between performance payouts, are—

(1) Hired, transferred, reassigned, or promoted;

(2) In a leave-without-pay status (except as provided in paragraphs (f) and (g) of this section); or

(3) In other circumstances where proration is considered appropriate.

(f) *Adjustments for employees returning after performing honorable service in the uniformed services.* DoD will issue implementing issuances regarding how it sets the rate of basic pay prospectively for an employee who leaves a DoD position to perform service in the uniformed services (in accordance with 38 U.S.C. 4303 and 5 CFR 353.102) and returns through the exercise of a reemployment right provided by law, Executive order, or regulation under which accrual of service for seniority-related benefits is protected (*e.g.*, 38 U.S.C. 4316). DoD will credit the employee with increases under § 9901.323 and increases to basic pay under this section based on the employee's last DoD rating of record or the average percentage basic pay increases granted to employees in the same pay pool, pay schedule, and pay band who received the modal rating, whichever is most advantageous to the employee. For employees who have no such rating of record, DoD will use the modal rating received by other employees in the same pay pool, pay schedule, and pay band during the most recent rating cycle.

(g) *Adjustments for employees returning to duty after being in workers' compensation status.* DoD will issue implementing issuances regarding how it sets the rate of basic pay prospectively for an employee who returns to duty after a period of receiving injury compensation under 5 U.S.C. chapter 81, subchapter I (in a leave-without-pay status or as a separated employee). For the intervening period, DoD will credit the employee with increases under § 9901.323 and increases to basic pay under this section based on the employee's last DoD rating of record or the average percentage basic pay increases granted to employees in the same pay pool, pay schedule, and pay band who received the modal rating, whichever is most advantageous to the employee. For employees who have no such rating of record, DoD will use the modal rating received by other employees covered by the same pay pool, pay schedule, and pay band during the most recent rating cycle.

§ 9901.343 Pay reduction based on unacceptable performance and/or conduct.

An employee's rate of basic pay may be reduced based on a determination of unacceptable performance and/or conduct. Such reduction may not exceed 10 percent unless the employee has been changed to a lower pay band and a greater reduction is needed to set the employee's pay at the maximum rate of the pay band. (*See also* §§ 9901.352 and 9901.354.)

§ 9901.344 Other performance payments.

(a) In accordance with implementing issuances authorized officials may make other payments to—

(1) Recognize organizational or team achievement;

(2) Reward extraordinary individual performance through an extraordinary pay increase (EPI), as described in paragraph (b) of this section; and

(3) Provide for other special circumstances.

(b) An EPI is paid in addition to performance payouts under § 9901.342 and will usually be made effective at the time of those payouts. The future performance and contribution level exhibited by the employee will be expected to continue at an extraordinarily high level.

§ 9901.345 Treatment of developmental positions.

DoD may issue implementing issuances regarding pay increases for developmental positions. These issuances may require employees to meet certain standardized assessment or certification points as part of a formal training/developmental program.

Pay Administration

§ 9901.351 Setting an employee's starting pay.

Subject to DoD implementing issuances, DoD may set the starting rate of pay for individuals who are newly appointed or reappointed to the Federal service anywhere within the assigned pay band.

§ 9901.352 Setting pay upon reassignment.

(a) Subject to paragraph (b) of this section, DoD may set pay anywhere within the assigned pay band when an employee is reassigned, either voluntarily or involuntarily, to a position in a comparable pay band.

(b) Subject to the adverse action procedures set forth in subpart G of this part and implementing issuances, DoD may reduce an employee's rate of basic pay within a pay band for unacceptable performance and/or conduct. A reduction in pay under this section may not be more than 10 percent or cause an employee's rate of basic pay to fall below the minimum rate of the employee's pay band. Such a reduction may be made effective at any time.

§ 9901.353 Setting pay upon promotion.

Subject to DoD implementing issuances, DoD may set pay anywhere within the assigned pay band when an employee is promoted to a position in a higher pay band.

§ 9901.354 Setting pay upon reduction in band.

(a) Subject to paragraph (b) of this section, DoD may set pay anywhere within the assigned pay band when an employee is reduced in band, either voluntarily or involuntarily. As applicable, pay retention provisions established under § 9901.355 will apply.

(b) Subject to the adverse action procedures set forth in subpart G of this part, DoD may assign an employee involuntarily to a position in a lower pay band for unacceptable performance and/or conduct, and may simultaneously reduce the employee's rate of basic pay. A reduction in basic pay under this section may not cause an employee's rate of basic pay to fall below the minimum rate of the employee's new pay band, or be more than 10 percent unless a larger reduction is needed to place the employee at the maximum rate of the lower band.

(c) If an employee is reduced in band involuntarily, but not through adverse action procedures (*e.g.*, termination of a temporary promotion or failure to successfully complete a supervisory probationary period), DoD will limit any reduction in pay in accordance with implementing issuances.

§ 9901.355 Pay retention.

(a) Subject to the requirements of this section, DoD will issue implementing

issuances regarding pay retention. Pay retention prevents a reduction in basic pay that would otherwise occur by preserving the former rate of basic pay within the employee's new pay band or by establishing a retained rate that exceeds the maximum rate of the new pay band.

(b) Pay retention will be based on the employee's rate of basic pay in effect immediately before the action that would otherwise reduce the employee's rate. A retained rate will be compared to the range of rates of basic pay applicable to the employee's position.

§ 9901.356 Miscellaneous.

(a) Except in the case of an employee who does not receive a pay increase under §§ 9901.323 because of an unacceptable rating of record, an employee's rate of basic pay may not be less than the minimum rate of the employee's pay band.

(b) Except as provided in § 9901.355, an employee's rate of basic pay may not exceed the maximum rate of the employee's band rate range.

(c) DoD will follow the rules for establishing pay periods and computing rates of pay in 5 U.S.C. 5504 and 5505, as applicable. For employees covered by 5 U.S.C. 5504, annual rates of pay will be converted to hourly rates of pay in computing payments received by covered employees.

(d) DoD may promulgate implementing issuances that provide for a special increase prior to an employee's movement in recognition of the fact that the employee will not be eligible for a promotion increase under the GS system, if a DoD employee moves from the pay system established under this subpart to a GS position having a higher level of duties and responsibilities.

(e) Subject to DoD implementing issuances, DoD may set the rate of basic pay of an employee upon the expiration of a temporary reassignment or promotion, and any resulting reduction in basic pay is not considered an adverse action under subpart G of this part.

Premium Pay

§ 9901.361 General.

(a) This section applies to eligible DoD employees and positions which would otherwise be covered by 5 U.S.C. chapter 55, subchapter V, subject to a determination by the Secretary under § 9901.102(b)(2). In making such a determination, the Secretary may waive the provisions of 5 U.S.C. chapter 55, subchapter V (except section 5545b), in whole or in part with respect to any category of employees approved for coverage.

(b) DoD will issue implementing issuances regarding additional payments which include, but are not limited to:

(1) Overtime pay (excluding overtime pay under the Fair Labor Standards Act);

(2) Compensatory time off;

(3) Sunday, holiday, and night pay;

(4) Annual premium pay for standby duty and administratively uncontrollable overtime;

(5) Criminal investigator availability pay; and

(6) Hazardous duty differentials.

(c) DoD will determine the conditions of eligibility for the amounts of and limitations on payments made under the authority of this section.

Conversion Provisions

§ 9901.371 General.

(a) This section and §§ 9901.372 and 9901.373 describe the provisions that apply when DoD employees are converted to the NSPS pay system established under this subpart. An affected employee may convert from the GS system, a prevailing rate system, the SL/ST system, or the SES system (or such other systems designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902), as provided in § 9901.302. For the purpose of this section and §§ 9901.372 and 9901.373, the terms ''convert,'' ''converted,'' ''converting,'' and ''conversion'' refer to employees who become covered by the pay system without a change in position (as a result of a coverage determination made under § 9901.102(b)(2)) and exclude employees who are reassigned or transferred from a noncovered position to a position already covered by the NSPS pay system.

(b) DoD will issue implementing issuances prescribing the policies and procedures necessary to implement these transitional provisions.

§ 9901.372 Creating initial pay ranges.

DoD will set the initial band rate ranges for the NSPS pay system established under this subpart. The initial ranges may link to the ranges that apply to converted employees in their previously applicable pay system (taking into account any applicable locality payment under 5 U.S.C. 5304, special rate under 5 U.S.C. 5305, or local market supplement under § 9901.332).

§ 9901.373 Conversion of employees to the NSPS pay system.

(a) When the NSPS pay system is established under this subpart and applied to a category of employees, DoD will convert employees to the system without a reduction in their rate of pay (including basic pay and any applicable locality payment under 5 U.S.C. 5304, special rate under 5 U.S.C. 5305, or local market supplement under § 9901.332).

(b) When an employee receiving a special rate under 5 U.S.C. 5305 before conversion is converted to an equal rate of pay under the NSPS pay system that consists of a basic rate and a local market supplement, the conversion will not be considered as resulting in a reduction in basic pay for the purpose of applying subpart G of this part.

(c) If another personnel action (*e.g.*, promotion, geographic movement) takes effect on the same day as the effective date of an employee's conversion to the new pay system, DoD will process the other action under the rules pertaining to the employee's former system before processing the conversion action.

(d) An employee on a temporary promotion at the time of conversion will be returned to his or her official position of record prior to processing the conversion. If the employee is temporarily promoted immediately after the conversion, pay will be set under the rules for promotion increases under the NSPS pay system.

(e) The Secretary has discretion to make one-time pay adjustments for GS and prevailing rate employees when they are converted to the NSPS pay system. DoD will issue implementing issuances governing any such pay adjustment, including rules governing employee eligibility, pay computations, and the timing of any such pay adjustment.

Subpart D—Performance Management

§ 9901.401 Purpose.

(a) This subpart provides for the establishment in DoD of a performance management system as authorized by 5 U.S.C. 9902.

(b) The performance management system established under this subpart is designed to promote and sustain a high-performance culture by incorporating the following elements:

(1) Adherence to merit principles set forth in 5 U.S.C. 2301;

(2) A fair, credible, and transparent employee performance appraisal system;

(3) A link between the performance management system and DoD's strategic plan;

(4) A means for ensuring employee involvement in the design and implementation of the system;

(5) Adequate training and retraining for supervisors, managers, and

employees in the implementation and operation of the performance management system;

(6) A process for ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;

(7) Effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance;

(8) A means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system; and

(9) A pay-for-performance evaluation system to better link individual pay to performance, and provide an equitable method for appraising and compensating employees.

§ 9901.402 Coverage.

(a) This subpart applies to eligible DoD employees and positions in the categories listed in paragraph (b) of this section, subject to a determination by the Secretary under § 9901.102(b)(2), except as provided in paragraph (c) of this section.

(b) The following employees and positions in DoD organizational and functional units are eligible for coverage under this subpart:

(1) Employees and positions who would otherwise be covered by 5 U.S.C. chapter 43;

(2) Employees and positions who were excluded from chapter 43 by OPM under 5 CFR 430.202(d) prior to the date of coverage of this subpart; and

(3) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.

(c) This subpart does not apply to employees who have not been, and are not expected to be, employed in an NSPS position for longer than a minimum period (as defined in § 9901.404) during a single 12-month period.

§ 9901.403 Waivers.

When a specified category or group of employees is covered by the performance management system(s) established under this subpart, the provisions of 5 U.S.C. chapter 43 are waived with respect to that category of employees.

§ 9901.404 Definitions.

In this subpart—

Appraisal means the review and evaluation of an employee's performance.

Appraisal period means the period of time established under a performance management system for reviewing employee performance.

Competencies has the meaning given that term in § 9901.103.

Contribution has the meaning given that term in § 9901.103.

Minimum period means the period of time established by DoD during which an employee will perform under applicable performance expectations before receiving a rating of record.

Pay-for-performance evaluation system means the performance management system established under this subpart to link individual pay to performance and provide an equitable method for appraising and compensating employees.

Performance has the meaning given that term in § 9901.103.

Performance expectations means that which an employee is required to do, as described in § 9901.406, and may include observable or verifiable descriptions of manner, quality, quantity, timeliness, and cost effectiveness.

Performance management means applying the integrated processes of setting and communicating performance expectations, monitoring performance and providing feedback, developing performance and addressing poor performance, and rating and rewarding performance in support of the organization's goals and objectives.

Performance management system means the policies and requirements established under this subpart, as supplemented by DoD implementing issuances, for setting and communicating employee performance expectations, monitoring performance and providing feedback, developing performance and addressing poor performance, and rating and rewarding performance. It incorporates the elements set forth in § 9901.401(b).

Rating of record has the meaning given that term in § 9901.103.

Unacceptable performance has the meaning given that term in § 9901.103.

§ 9901.405 Performance management system requirements.

(a) DoD will issue implementing issuances that establish a performance management system for DoD employees, subject to the requirements set forth in this subpart.

(b) The NSPS performance management system will—

(1) Specify the employees covered by the system(s);

(2) Provide for the periodic appraisal of the performance of each employee, generally once a year, based on performance expectations;

(3) Specify the minimum period during which an employee will perform before being eligible to receive a rating of record;

(4) Hold supervisors and managers accountable for effectively managing the performance of employees under their supervision as set forth in paragraph (c) of this section;

(5) Specify procedures for setting and communicating performance expectations, monitoring performance and providing feedback, and developing, rating, and rewarding performance; and

(6) Specify the criteria and procedures to address the performance of employees who are detailed or transferred and for employees in other special circumstances.

(c) In fulfilling the requirements of paragraph (b) of this section, supervisors and managers are responsible for—

(1) Clearly communicating performance expectations and holding employees responsible for accomplishing them;

(2) Making meaningful distinctions among employees based on performance and contribution;

(3) Fostering and rewarding excellent performance;

(4) Addressing poor performance; and

(5) Assuring that employees are assigned a rating of record when required by DoD implementing issuances.

§ 9901.406 Setting and communicating performance expectations.

(a) Performance expectations will support and align with the DoD mission and its strategic goals, organizational program and policy objectives, annual performance plans, and other measures of performance.

(b) Supervisors and managers will communicate performance expectations, including those that may affect an employee's retention in the job. Performance expectations will be communicated to the employee prior to holding the employee accountable for them. However, notwithstanding this requirement, employees are always accountable for demonstrating professionalism and standards of appropriate conduct and behavior, such as civility and respect for others.

(c) Performance expectations for supervisors and managers will include assessment and measurement of how well supervisors and managers plan, monitor, develop, correct, and assess subordinate employees' performance.

(d) Performance expectations may take the form of—

(1) Goals or objectives that set general or specific performance targets at the individual, team, and/or organizational level;

(2) Organizational, occupational, or other work requirements, such as standard operating procedures, operating instructions, manuals, internal rules and directives, and/or other instructions that are generally applicable and available to the employee;

(3) A particular work assignment, including expectations regarding the quality, quantity, accuracy, timeliness, and/or other expected characteristics of the completed assignment;

(4) Competencies an employee is expected to demonstrate on the job, and/or the contributions an employee is expected to make; or

(5) Any other means, provided that the expectation would be clear to a reasonable person.

(e) Supervisors will involve employees, insofar as practicable, in the development of their performance expectations. However, final decisions regarding performance expectations are within the sole and exclusive discretion of management.

§ 9901.407 Monitoring performance and providing feedback.

In applying the requirements of the performance management system and its implementing issuances and policies, supervisors will—

(a) Monitor the performance of their employees and their contribution to the organization; and

(b) Provide ongoing (*i.e.*, regular and timely) feedback to employees on their actual performance with respect to their performance expectations, including one or more interim performance reviews during each appraisal period.

§ 9901.408 Developing performance and addressing poor performance.

(a) DoD implementing issuances will prescribe procedures that supervisors will use to develop employee performance and to address poor performance.

(b) If during the appraisal period a supervisor determines that an employee's performance is unacceptable, the supervisor will—

(1) Consider the range of options available to address the performance deficiency, which include, but are not limited to, remedial training, an improvement period, a reassignment, an oral warning, a letter of counseling, a written reprimand, or adverse action defined in subpart G of this part, including a reduction in rate of basic pay or pay band; and

(2) Take appropriate action to address the deficiency, taking into account the circumstances, including the nature and gravity of the unacceptable performance and its consequences.

(c) As specified in subpart H of this part, employees may appeal adverse actions (*e.g.*, suspensions of more than 14 days, reductions in pay and pay band, and removal) based on unacceptable performance.

§ 9901.409 Rating and rewarding performance.

(a) The NSPS performance management system will establish a multi-level rating system as described in the DoD implementing issuances.

(b) An appropriate rating official will prepare and issue a rating of record after the completion of the appraisal period. An additional rating of record may be issued to reflect a substantial and sustained change in the employee's performance since the last rating of record. A rating of record will be used as a basis for—

(1) A pay determination under any applicable pay rules;

(2) Determining reduction-in-force retention standing; and

(3) Such other action that DoD considers appropriate, as specified in DoD implementing issuances.

(c) A rating of record will assess an employee's performance with respect to his or her performance expectations and/or relative contributions and is considered final when issued to the employee with all appropriate reviews and signatures.

(d) An appropriate rating official will communicate the rating of record and number of shares to the employee prior to payout.

(e) A rating of record issued under this subpart is an official rating of record for the purpose of any provision of title 5, Code of Federal Regulations, for which an official rating of record is required. DoD will transfer ratings of record between subordinate organizations and to other Federal departments or agencies in accordance with DoD implementing issuances.

(f) DoD may not lower the rating of record of an employee on an approved absence from work, including the absence of a disabled veteran to seek medical treatment, as provided in Executive Order 5396.

(g) A rating of record may be challenged by an employee only through a reconsideration procedure as provided in DoD implementing issuances. This procedure will be the sole and exclusive method for all employees to challenge a rating of record. A payout determination will not be subject to reconsideration procedures.

(h) A supervisor or other rating official may prepare an additional performance appraisal for the purposes specified in the applicable performance management system (*e.g.*, transfers and details) at any time after the completion of the minimum period. Such an appraisal is not a rating of record.

(i) DoD implementing issuances will establish policies and procedures for crediting performance in a reduction in force in accordance with subpart F of this part.

Subpart E—Staffing and Employment

General

§ 9901.501 Purpose.

(a) This subpart sets forth policies and procedures for the establishment of qualification requirements; recruitment for, and appointment to, positions; and assignment, reassignment, detail, transfer, or promotion of employees, consistent with 5 U.S.C. 9902(a) and (k).

(b) DoD will comply with merit principles set forth in 5 U.S.C. 2301 and with 5 U.S.C. 2302 (dealing with prohibited personnel practices).

(c) DoD will adhere to veterans' preference principles set forth in 5 U.S.C. 2302(b)(11), consistent with 5 U.S.C. 9902(a) and (k).

§ 9901.502 Scope of authority.

When a specified category of employees, applicants, and positions is covered by the system established under this subpart, the provisions of 5 U.S.C. 3301, 3302, 3304, 3317(a), 3318 and 3319 (except with respect to veterans' preference), 3321, 3324, 3325, 3327, 3330, 3341, and 5112(a) are modified and replaced with respect to that category, except as otherwise specified in this subpart. In accordance with § 9901.105, DoD will prescribe implementing issuances to carry out the provisions of this subpart.

§ 9901.503 Coverage.

(a) This subpart applies to eligible DoD employees and positions in the categories listed in paragraph (b) of this section, subject to a determination by the Secretary under § 9901.102(b).

(b) The following employees and positions in DoD organizational and functional units are eligible for coverage under this subpart:

(1) Employees and positions who would otherwise be covered by 5 U.S.C. chapters 31 and 33 (excluding members of the Senior Executive Service); and

(2) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.

§ 9901.504 Definitions.

In this subpart—

Career employee means an individual appointed without time limit to a

competitive or excepted service position in the Federal career service.

Promotion has the meaning given that term in § 9901.103.

Reassignment has the meaning given that term in § 9901.103.

Reduction in band has the meaning given that term in § 9901.103.

Temporary employee means an individual not on a career appointment who is employed for a limited but unspecified period of time, up to a maximum established by implementing issuances, to perform the work of a position that does not require an additional permanent employee.

Term employee means an individual not on a career appointment who is employed for a specified period of time up to a maximum established by implementing issuances, to perform the work of a temporary or permanent position.

Time-limited employee means an individual appointed to a position for a period of limited duration, either specified or unspecified (*e.g.*, term or temporary) in either the competitive or excepted service.

External Recruitment and Internal Placement

§ 9901.511 Appointing authorities.

(a) *Competitive and excepted appointing authorities.* DoD may continue to use excepted and competitive appointing authorities and entitlements under chapters 31 and 33 of title 5, U.S. Code, Governmentwide regulations, or Executive orders, as well as other statutes, and those individuals will be given career or time-limited appointments, as appropriate.

(b) *Additional appointing authorities.* (1) The Secretary and the Director may enter into written agreements providing for new excepted and competitive appointing authorities for positions covered by the National Security Personnel System, including noncompetitive appointments, and excepted appointments that may lead to a subsequent noncompetitive appointment to the competitive service.

(2)(i) DoD and OPM will jointly publish a notice in the **Federal Register** when establishing a new competitive appointing authority or a new excepted appointing authority that may lead to a subsequent noncompetitive appointment to a competitive position in the career service. DoD and OPM will issue a notice with a public comment period before establishing such authority, except as provided in paragraph (b)(2)(ii) of this section.

(ii) If DoD determines that a critical mission requirement exists, DoD and OPM may establish a new appointing authority as described in paragraph (b)(2)(i) of this section effective upon publication of a **Federal Register** notice without a preceding comment period. However, the notice will invite public comments, and DoD and OPM will issue another notice if the authority is revised based on those comments.

(3) DoD will prescribe appropriate implementing issuances to administer a new appointing authority established under paragraph (b) of this section.

(4) At least annually, DoD will publish in the **Federal Register** a consolidated list of all appointing authorities established under this section and currently in effect.

(c) *Severe shortage/critical need hiring authority.* (1) DoD may determine that there is a severe shortage of candidates or a critical hiring need, as defined in 5 U.S.C. 3304(a)(3) and 5 CFR part 337, subpart B, for particular occupations, pay bands, career groups, and/or geographic locations, and establish a specific authority to make appointments without regard to § 9901.515. Public notice will be provided in accordance with 5 U.S.C. 3304(a)(3)(A).

(2) For each specific authority, DoD will document the basis for the severe shortage or critical hiring need, consistent with 5 CFR 337.204(b) or 337.205(b), as applicable.

(3) DoD will terminate or modify a specific authority to make appointments under paragraph (a) of this section when it determines that the severe shortage or critical need upon which the authority was based no longer exists.

(4) DoD will prescribe appropriate implementing issuances to administer this authority and will notify OPM of determinations made under this section.

(d) *Time-limited appointing authorities.* (1) The Secretary may prescribe the procedures for appointing employees, the duration of such appointments, and the appropriate uses of time-limited employees.

(2) The Secretary will prescribe implementing issuances establishing the procedures under which a time-limited employee (*e.g.*, an individual employed on a temporary or term basis) serving in a competitive service position may be converted without further competition to the career service if—

(i) The vacancy announcement met the requirements of § 9901.515(a) and included the possibility of noncompetitive conversion to a competitive position in the career service at a later date;

(ii) The individual was appointed using the competitive examining procedures set forth in § 9901.515(b) and (c); and

(iii) The employee completed at least 2 years of continuous service at the fully successful level of performance or better.

§ 9901.512 Probationary periods.

The Secretary may establish probationary periods as deemed appropriate for employees appointed to positions in the competitive and excepted service covered by the National Security Personnel System. DoD will prescribe the conditions for such periods, including creditable service, in implementing issuances. A preference eligible who has completed 1 year of a probationary period is covered by subparts G and H of this part. An employee who fails to complete an in-service probationary period established under § 9901.516 will be returned to a position and rate of pay comparable to the position and rate of pay he or she held before the probationary period.

§ 9901.513 Qualification standards.

DoD may continue to use qualification standards established or approved by OPM. DoD also may establish qualification standards for positions covered by the National Security Personnel System.

§ 9901.514 Non-citizen hiring.

DoD may establish procedures for appointing non-citizens to positions within NSPS under the following conditions:

(a) In the absence of a qualified U.S. citizen, DoD may appoint a qualified non-citizen in the excepted service; and

(b) Immigration and security requirements will apply to these appointments.

§ 9901.515 Competitive examining procedures.

(a) In recruiting applicants for competitive appointments to competitive service positions in NSPS, DoD will provide public notice for all vacancies in the career service in accordance with 5 CFR part 330 and—

(1) Will accept applications for the vacant position from all sources;

(2) Will, at a minimum, consider applicants from the local commuting area;

(3) May concurrently consider applicants from other targeted recruitment areas, as specified in the vacancy announcement, in addition to those applicants from the minimum area of consideration; and

(4) May consider applicants from outside that minimum area(s) of consideration as necessary to provide sufficient qualified candidates.

(b) DoD may establish procedures for the examination of applicants for entry into competitive and excepted service positions in the National Security Personnel System. Such procedures will adhere to the merit system principles in 5 U.S.C. 2301 and veterans' preference requirements as set forth in 5 U.S.C. 3309 through 3320, as applicable, and will be available in writing for applicant review. These procedures will also include provisions for employees entitled to priority consideration as defined in 5 U.S.C. 1302(c) or 8151.

(c) In establishing examining procedures for appointing employees in the competitive service under paragraph (b) of this section, DoD may use traditional numerical rating and ranking or alternative ranking and selection procedures (category rating) in accordance with 5 U.S.C. 3319(b) and (c).

(d) DoD will apply the requirements of paragraphs (a), (b), and (c) of this section to the recruitment of applicants for time-limited positions in the competitive service in order to qualify an appointee for noncompetitive conversion to a competitive position in the career service, in accordance with § 9901.511.

§ 9901.516 Internal placement.

DoD may prescribe implementing issuances regarding the assignment, reassignment, reinstatement, detail, transfer, and promotion of individuals or employees into or within NSPS. These issuances may also establish in-service probationary periods and prescribe the conditions under which employees will complete such periods. Such issuances will be made available to applicants and employees. Internal placement actions may be made on a permanent or temporary basis using competitive and noncompetitive procedures. Those exceptions to competitive procedures set forth in 5 CFR part 335 apply to NSPS.

Subpart F—Workforce Shaping

§ 9901.601 Purpose and applicability.

This subpart contains the regulations implementing the provisions of 5 U.S.C. 9902(k) concerning the Department's system for realigning, reorganizing, and reshaping its workforce. This subpart applies to categories of positions and employees affected by such actions resulting from the planned elimination, addition, or redistribution of functions, duties, or skills within or among organizational units, including realigning, reshaping, delayering, and similar organizational-based restructuring actions. This subpart does not apply to actions involving the conduct and/or performance of individual employees, which are covered by subpart G of this part.

§ 9901.602 Scope of authority.

When a specified category of employees is covered by the system established under this subpart, the provisions of 5 U.S.C. 3501 and 3502 (except with respect to veterans' preference), and 3503 are modified and replaced with respect to that category, except as otherwise specified in this subpart. In accordance with § 9901.105, DoD will prescribe implementing issuances to carry out the provisions of this subpart.

§ 9901.603 Definitions.

In this subpart:

Competing employee means a career employee (including an employee serving an initial probationary period), an employee serving on a term appointment, and other employees as identified in DoD implementing issuances.

Competitive area means the boundaries within which employees compete for retention under this subpart, based on factors described in § 9901.605(a).

Competitive group means employees within a competitive area who are on a common retention list for the purpose of exercising displacement rights.

Displacement right means the right of an employee who is displaced from his or her present position because of position abolishment, or because of displacement resulting from the abolishment of a higher-standing employee on the retention list, to displace a lower-standing employee on the list on the basis of the retention factors.

Notice means a written communication from the Department to an individual employee stating that the employee will be displaced from his or her position as a result of a reduction in force action under this subpart.

Rating of record has the meaning given that term in § 9901.103.

Retention factors means performance, veterans' preference, tenure of employment, length of service, and such other factors as the Secretary considers necessary and appropriate to rank employees within a particular retention list.

Retention list means a list of all competing employees occupying positions in the competitive area, who are grouped in the same competitive group on the basis of retention factors. While all positions in the competitive group are listed, only competing employees have retention standing.

Tenure group means a group of employees with a given appointment type. In a reduction in force, employees are first placed in a tenure group and then ranked within that group according to retention factors.

Undue interruption means a degree of interruption that would prevent the completion of required work by an employee within 90 days after the employee has been placed in a different position.

§ 9901.604 Coverage.

(a) *Employees covered.* The following employees and positions in DoD organizational and functional units are eligible for coverage under this subpart:

(1) Employees and positions who would otherwise be covered by 5 U.S.C. chapter 35 (excluding members of the Senior Executive Service and employees who are excluded from coverage by other statutory authority); and

(2) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.

(b) *Actions covered.* (1) *Reduction in force.* The Department will apply this subpart when releasing a competing employee from a retention list by separation, reduction in band, or assignment involving displacement, and the release results from an action described in § 9901.601.

(2) *Transfer of function.* The Department will apply 5 CFR part 351, subpart C, when a function transfers from one competitive area to a different competitive area, except as otherwise provided in this subpart.

(3) *Furlough.* The Department will apply the provisions in 5 CFR 351.604 when furloughing a competing employee for more than 30 consecutive days, except as otherwise provided in this subpart.

(c) *Actions excluded.* This subpart does not apply to—

(1) The termination of a temporary promotion or temporary reassignment and the subsequent return of an employee to the position held before the temporary promotion or temporary reassignment (or to a position with comparable pay band, pay, status, and tenure);

(2) A reduction in band based on the reclassification of an employee's position due to the application of new classification standards or the correction of a classification error;

(3) Placement of an employee serving on a seasonal basis in a nonpay, nonduty status in accordance with conditions established at time of appointment;

(4) A change in an employee's work schedule from other-than-full-time to full-time;

(5) A change in an employee's mixed tour work schedule in accordance with conditions established at time of appointment;

(6) A change in the scheduled tour of duty of an other-than-full-time schedule;

(7) A reduction in band based on the reclassification of an employee's position due to erosion of duties, except that this exclusion does not apply to such reclassification actions that will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days; or

(8) Any other personnel action not covered by paragraph (b) of this section.

§ 9901.605 Competitive area.

(a) *Basis for competitive area.* The Department may establish a competitive area on the basis of one or more of the following considerations:

(1) Geographical location(s);

(2) Line(s) of business;

(3) Product line(s);

(4) Organizational unit(s); and

(5) Funding line(s).

(b) *Employees included in competitive area.* A competitive area will include all competing employees holding official positions of record in the defined competitive area.

(c) *Review of competitive area determinations.* The Department will make all competitive area definitions available for review.

(d) *Change of competitive area.* Competitive areas will be established for a minimum of 90 days before the effective date of a reduction in force. In implementing issuances, DoD will establish approval procedure requirements for any competitive area identified less than 90 days before the effective date of a reduction in force.

(e) *Limitations.* The Department will establish a competitive area only on the basis of legitimate organizational reasons, and competitive areas will not be used for the purpose of for targeting an individual employee for reduction in forces on the basis of nonmerit factors.

§ 9901.606 Competitive group.

(a) The Department will establish separate competitive groups for employees—

(1) In the excepted and competitive service;

(2) Under different excepted service appointment authorities; and

(3) With different work schedules (*e.g.*, full-time, part-time, seasonal, intermittent).

(b) The Department may further define competitive groups on the basis of one or more of the following considerations:

(1) Career group;

(2) Pay schedule;

(3) Occupational series or specialty;

(4) Pay band; or

(5) Trainee status.

(c) An employee is placed into a competitive group based on the employee's official position of record. The Department may supplement an employee's official position description by using other applicable records that document the employee's actual duties and responsibilities.

(d) The competitive group includes the official positions of employees on a detail or other nonpermanent assignment to a different position from the competitive group.

§ 9901.607 Retention standing.

(a) *Retention list.* Within each competitive group, the Department will establish a retention list of competing employees in descending order based on the following:

(1) Tenure, with career employees (including employees serving an initial probationary period) listed first, followed by other employees on term appointments and other employees as identified in DoD implementing issuances.

(2) Veterans' preference, in accordance with the preference requirements in 5 CFR 351.504(c) and (d), including the preference restrictions found in 5 U.S.C. 3501(a);

(3) The rating of record, in accordance with DoD implementing issuances; and

(4) Creditable civilian and/or uniformed service in accordance with 5 CFR 351.503 and 5 U.S.C. 3502(a)(A) and (B). The Department may establish tie-breaking procedures when two or more employees have the same retention standing.

(b) *Active armed forces member not on list.* The retention list does not include the name of an employee who, on the effective date of the reduction in force, is on active duty in the armed forces with a restoration right under 5 CFR part 353.

(c) *Access to retention list.* Both an employee who received a specific reduction in force notice, and the employee's representative, have access to the applicable retention list in accordance with 5 CFR 351.505.

§ 9901.608 Displacement, release, and position offers.

(a) *Displacement to other positions on the retention list.* (1) An employee who is displaced because of position abolishment, or because of displacement resulting from the abolishment of the position of a higher-standing employee on the retention list, may displace a lower-standing employee on the list if—

(i) The higher-standing employee is qualified for the position, consistent with 5 CFR 351.702; and

(ii) No undue interruption would result from the displacement.

(2) A displacing employee retains his or her status and tenure.

(b) *Release from the retention list.* (1) The Department selects employees for release from the list on the basis of the ascending order of retention standing set forth in § 9901.607(a).

(2) The Department may not release a competing employee from a retention list that contains a position held by a temporary employee (*e.g.*, a competitive service temporary position).

(3) The Department may temporarily postpone the release of an employee from the retention list when appropriate under 5 CFR 351.506, 351.606, 351.607, and 351.608.

(c) *Placement in vacant positions.* At the Department's option, the Department may offer an employee released from a retention list a vacant position within the competitive area in lieu of reduction in force, based on relative retention standing as specified in § 9901.607(a).

(d) *Actions for employees with no offer.* If a released employee does not receive an offer of another position under paragraph (c) of this section to a position on a different retention list, the Department may—

(1) Separate the employee by reduction in force; or

(2) Furlough the employee under applicable procedures, including the provisions in 5 CFR 351.604.

§ 9901.609 Reduction in force notices.

The Department will provide a specific written notice to each employee reached for an action in reduction in force competition at least 60 days before the reduction in force becomes effective. DoD will prescribe the content of the notice in implementing issuances.

§ 9901.610 Voluntary separation.

(a) The Secretary of Defense may—

(1) Separate from the service any employee who volunteers to be separated even though the employee is not otherwise subject to separation due to a reduction in force; and

(2) For each employee voluntarily separated under paragraph (a)(1) of this section, retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(b) The separation of an employee under paragraph (a) of this section will

be treated as an involuntary separation due to a reduction in force.

§ 9901.611 Reduction in force appeals.

(a) An employee who believes the Department did not properly apply the provisions of this subpart may appeal the reduction in force action to the Merit Systems Protection Board as provided for in 5 CFR 351.901 if the employee was released from the retention list and was—

(1) Separated by reduction in force;

(2) Reduced in band by reduction in force; or

(3) Furloughed by reduction in force for more than 30 consecutive days.

(b) Paragraph (a) of this section does not apply to actions taken under internal DoD placement programs, including the DoD Priority Placement Program.

Subpart G—Adverse Actions

General

§ 9901.701 Purpose.

This subpart contains regulations prescribing the requirements for employees who are removed, suspended, furloughed for 30 days or less, reduced in pay, or reduced in pay band (or comparable reduction). DoD may prescribe implementing issuances to carry out the provisions of this subpart.

§ 9901.702 Waivers.

With respect to any category of employees covered by this subpart, subchapters I and II of 5 U.S.C. chapter 75, in addition to those provisions of 5 U.S.C. chapter 43 specified in subpart D of this part, are waived and replaced by this subpart.

§ 9901.703 Definitions.

In this subpart:

Adverse action means a removal, suspension, furlough for 30 days or less, reduction in pay, or reduction in pay band (or comparable reduction).

Furlough has the meaning given that term in § 9901.103.

Indefinite suspension means the placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further Department action. An indefinite suspension continues for an indeterminate period of time and ends with the occurrence of pending conditions set forth in notice of actions which may include the completion of any subsequent administrative action.

Mandatory removal offense (MRO) has the meaning given that term in § 9901.103.

Pay means the rate of basic pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind. For the purpose of this subpart, pay does not include locality-based comparability payments under 5 U.S.C. 5304, local market supplements under subpart C of this part, or other similar payments.

Probationary period means that period established pursuant to § 9901.512.

Removal means the involuntary separation of an employee from the Federal service.

Suspension means the temporary placement of an employee, for disciplinary reasons, in a nonduty/nonpay status.

§ 9901.704 Coverage.

(a) *Actions covered.* This subpart covers removals, suspensions, furloughs of 30 days or less, reductions in pay, or reductions in band (or comparable reductions).

(b) *Actions excluded.* This subpart does not cover—

(1) An action taken against an employee during a probationary period (excluding an in-service or supervisory probationary period);

(2) A reduction in pay or pay band of a supervisor or manager who has not completed a supervisory probationary period, if the supervisory or manager is returned to the pay or pay band held immediately before becoming a supervisor or manager.

(3) A reduction in pay or pay band of an employee who does not satisfactorily complete an in-service probationary period under § 9901.512.

(4) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position in a comparable pay band, if the Department informed the employee that the promotion was to be of limited duration;

(5) A reduction-in-force action under subpart F of this part;

(6) An action imposed by the Merit Systems Protection Board under 5 U.S.C. 1215;

(7) A voluntary action by an employee;

(8) An action taken or directed by OPM based on suitability under 5 CFR part 731;

(9)(i) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(ii) Termination of appointment before the expiration date specified as a basic condition of employment at the time the appointment was made, except when the termination is taken against—

(A) A preference eligible employee who has completed 1 year under a time-limited appointment; or

(B) An employee who has completed a probationary period under a term appointment;

(10) Cancellation of a promotion to a position not classified prior to the promotion;

(11) Placement of an employee serving on an intermittent or seasonal basis in a temporary non-duty, non-pay status in accordance with conditions established at the time of appointment;

(12) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation;

(13) An action taken under a provision of statute, other than one codified in title 5, U.S. Code, which excludes the action from 5 U.S.C. chapter 75 or this subpart;

(14) A classification determination, including a classification determination under subpart B of this part;

(15) Suspension or removal under 5 U.S.C. 7532;

(16) An action to terminate grade retention upon conversion to the NSPS pay system established under subpart C of this part; and

(c) *Employees covered.* Subject to a determination by the Secretary under § 9901.102(b)(2), this subpart applies to DoD employees, except as excluded by paragraph (d) of this section.

(d) *Employees excluded.* This subpart does not apply to—

(1) An employee who is serving a probationary period, except when the employee is a preference eligible who has completed 1 year of that probationary period;

(2) A member of the Senior Executive Service;

(3) An employee who is terminated in accordance with terms specified as conditions of employment at the time the appointment was made;

(4) An employee whose appointment is made by and with the advice and consent of the Senate;

(5) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by—

(i) The President, for a position that the President has excepted from the competitive service;

(ii) OPM, for a position that OPM has excepted from the competitive service; or

(iii) The President or the Secretary for a position excepted from the competitive service by statute;

(6) An employee whose appointment is made by the President;

(7) A reemployed annuitant who is receiving an annuity from the Civil

Service Retirement and Disability Fund or the Foreign Service Retirement and Disability Fund;

(8) An employee who is an alien or non-citizen occupying a position outside the United States, as described in 5 U.S.C. 5102(c)(11);

(9) A member of the National Security Labor Relations Board;

(10) A non-appropriated fund employee;

(11) A National Guard technician who is employed under 32 U.S.C. 709; and

(12) An employee against whom an adverse personnel action is taken or imposed under any statute or regulation other than this subpart.

Requirements for Removal, Suspension, Furlough of 30 Days or Less, Reduction in Pay, or Reduction in Band (or Comparable Reduction)

§ 9901.711 Standard for action.

The Department may take an adverse action under this subpart only for such cause as will promote the efficiency of the service.

§ 9901.712 Mandatory removal offenses.

(a) The Secretary has the sole, exclusive, and unreviewable discretion to identify offenses that have a direct and substantial adverse impact on the Department's national security mission. Such offenses will be identified in advance as part of departmental regulations, and made known to all employees upon identification.

(b) The procedures in §§ 9901.713 through 9901.716 apply to actions taken under this section. However, a proposed notice required by § 9901.714 may be issued to the employee in question only after the Secretary's review and approval.

(c) The Secretary has the sole, exclusive, and unreviewable discretion to mitigate the removal penalty on his or her own initiative or at the request of the employee in question.

(d) Nothing in this section limits the discretion of the Department to remove employees for offenses other than those identified by the Secretary as an MRO.

§ 9901.713 Procedures.

An employee against whom an adverse action is proposed is entitled to the following:

(a) A proposal notice under § 9901.714;

(b) An opportunity to reply under § 9901.715; and

(c) A decision notice under § 9901.716.

§ 9901.714 Proposal notice.

(a) *Notice period.* The Department will provide at least 15 days advance written notice of a proposed adverse action. However, if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the Department will provide at least 5 days advance written notice.

(b) *Contents of notice.* (1) The proposal notice will inform the employee of the factual basis for the proposed action in sufficient detail to permit the employee to reply to the notice, and inform the employee of his or her right to review the Department's evidence supporting the proposed action. The Department may not use evidence that cannot be disclosed to the employee, his or her representative, or designated physician pursuant to 5 CFR 297.204.

(2) When some but not all employees in a given category and/or organizational unit are being furloughed, the proposal notice will state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough. The notice is not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(c) *Duty status during notice period.* An employee will remain in a duty status in his or her regular position during the notice period. However, when the Department determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, adversely impact the Department's mission, or otherwise jeopardize legitimate Government interests, the Department may elect one or a combination of the following alternatives:

(1) Assign the employee to duties where the Department determines the employee is no longer a threat to the employee or others, the Department's mission, or Government property or interests;

(2) Allow the employee to take leave, or place him or her in an appropriate leave status (annual leave, sick leave, or leave without pay) or absence without leave if the employee has absented himself or herself from the worksite without approved leave; or

(3) Place the employee in a paid, non-duty status for such time as is necessary to effect the action.

§ 9901.715 Opportunity to reply.

(a) The Department will provide employees at least 10 days, which will run concurrently with the notice period, to reply orally and/or in writing to a notice of proposed adverse action. However, if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the Department will provide the employee at least 5 days, which will run concurrently with the notice period, to reply orally and/or in writing.

(b) The opportunity to reply orally does not include the right to a formal hearing with examination of witnesses.

(c) During the opportunity to reply period, the Department will provide the employee a reasonable amount of official time to review the Department's supporting evidence, and to furnish affidavits and other documentary evidence, if the employee is otherwise in an active duty status.

(d) The Department will designate an official to receive the employee's written and/or oral response. The official will have authority to make or recommend a final decision on the proposed adverse action.

(e) The employee may be represented by an attorney or other representative of the employee's choice and at the employee's expense, subject to paragraph (f) of this section. The employee will provide the Department with a written designation of his or her representative.

(f) The Department may disallow as an employee's representative—

(1) An individual whose activities as representative would cause a conflict between the interest or position of the representative and that of the Department,

(2) An employee of the Department whose release from his or her official position would give rise to unreasonable costs or whose work assignments preclude his or her release; or

(3) An individual whose activities as representative could compromise security.

(g)(1) An employee who wishes the Department to consider any medical condition that may be relevant to the proposed adverse action will provide medical documentation, as that term is defined at 5 CFR 339.104, during the opportunity to reply, whenever possible.

(2) When considering an employee's medical documentation, the Department may require or offer a medical examination pursuant to 5 CFR part 339, subpart C.

(3) When considering an employee's medical condition, the Department is not required to withdraw or delay a proposed adverse action. However, the Department will—

(i) Allow the employee to provide medical documentation during the opportunity to reply;

(ii) Comply with 29 CFR 1614.203 and relevant Equal Employment Opportunity Commission rules; and

(iii) Comply with 5 CFR 831.1205 or 844.202, as applicable, when issuing a decision to remove.

§ 9901.716 Decision notice.

(a) In arriving at its decision on a proposed adverse action, the Department may not consider any reasons for the action other than those specified in the proposal notice.

(b) The Department will consider any response from the employee and the employee's representative, if the response is provided to the official designated under § 9901.715(d) during the opportunity to reply period, and any medical documentation furnished under § 9901.715(g).

(c) The decision notice will specify in writing the reasons for the decision and advise the employee of any appeal or grievance rights under subparts H or I of this part.

(d) The Department will, to the extent practicable, deliver the notice to the employee on or before the effective date of the action. If unable to deliver the notice to the employee in person, the Department may mail the notice to the employee's last known address of record.

§ 9901.717 Departmental record.

(a) *Document retention.* The Department will keep a record of all relevant documentation concerning the action for a period of time pursuant to the General Records Schedule and the Guide to Personnel Recordkeeping. The record will include the following:

(1) A copy of the proposal notice;

(2) The employee's written response, if any, to the proposal;

(3) A summary of the employee's oral response, if any;

(4) A copy of the decision notice; and

(5) Any supporting material that is directly relevant and on which the action was substantially based.

(b) *Access to the record.* The Department will make the record available for review by the employee and furnish a copy of the record upon the employee's request or the request of the Merit Systems Protection Board (MSPB).

Savings Provision

§ 9901.721 Savings provision.

This subpart does not apply to adverse actions proposed prior to the date of an affected employee's coverage under this subpart.

Subpart H—Appeals

§ 9901.801 Purpose.

This subpart implements the provisions of 5 U.S.C. 9902(h), which establishes the system for Department employees to appeal certain adverse actions covered under subpart G of this part.

§ 9901.802 Applicable legal standards and precedents.

In accordance with 5 U.S.C. 9902(h)(3), in applying existing legal standards and precedents, MSPB is bound by the legal standard set forth in § 9901.107(a)(2).

§ 9901.803 Waivers.

When a specified category of employees is covered by an appeals system established under this subpart, the provisions of 5 U.S.C. 7701 are waived with respect to that category of employees to the extent they are inconsistent with the provisions of this subpart. The provisions of 5 U.S.C. 7702 are modified as provided in § 9901.809. The appellate procedures specified herein supersede those of MSPB to the extent MSPB regulations are inconsistent with this subpart. MSPB will follow the provisions in this subpart until it issues conforming regulations, which may not conflict with this part.

§ 9901.804 Definitions.

In this subpart:

Administrative judge or *AJ* means the official, including an administrative law judge, authorized by MSPB to hold a hearing in a matter covered by this subpart and subpart G of this part, or to decide such a matter without a hearing.

Class appeal means an appeal brought by a representative(s) of a group of similarly situated employees consistent with the provisions of Federal Rule of Civil Procedure 23.

Harmful error means error by the Department in the application of its procedures that is likely to have caused it to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is on the appellant to show that the error was harmful, *i.e.*, that it caused substantial harm or prejudice to his or her rights.

Mandatory removal offense (MRO) has the meaning given that term in § 9901.103.

MSPB means the Merit Systems Protection Board.

Petition for review (PFR) means a request for full MSPB review of a final Department decision.

Preponderance of the evidence means the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

Request for review (RFR) means a preliminary request for review of an initial decision of an MSPB administrative judge before that decision has become a final Department decision.

§ 9901.805 Coverage.

(a) Subject to a determination by the Secretary under § 9901.102(b)(2), this subpart applies to employees in DoD organizational and functional units that are included under NSPS who appeal removals; suspensions for more than 14 days, including indefinite suspensions; furloughs of 30 days or less; reductions in pay; or reductions in pay band (or comparable reductions), which constitute appealable adverse actions for the purpose of this subpart, provided such employees are covered by § 9901.704.

(b) This subpart does not apply to a reduction in force action taken under subpart F of this part, nor does it apply to actions taken under internal DoD placement programs, including the DoD Priority Placement Program.

(c) Appeals of suspensions of 14 days or less and other lesser disciplinary measures are not covered under this subpart but may be grieved through a negotiated grievance procedure or an administrative grievance procedure, whichever is applicable.

(d) The appeal rights in 5 CFR 315.806 apply to the termination of an employee in the competitive service while serving a probationary period.

(e) Actions taken under 5 U.S.C. 7532 are not appealable to MSPB.

§ 9901.806 Alternative dispute resolution.

The Department recognizes the value of using alternative dispute resolution methods such as mediation, an ombudsman, or interest-based problem-solving to address employee-employer disputes arising in the workplace, including those which may involve disciplinary or adverse actions. Such methods can result in more efficient and more effective outcomes than traditional, adversarial methods of dispute resolution. The use of alternative dispute resolution is encouraged. Such methods will be subject to collective bargaining to the extent permitted by subpart I of this part.

§ 9901.807 Appellate procedures.

(a) A covered Department employee may appeal to MSPB an adverse action listed in § 9901.805(a). Such an

employee has a right to be represented by an attorney or other representative of his or her own choosing. However, separate procedures apply when the action is taken under the special national security provisions established by 5 U.S.C. 7532.

(b)(1) This section modifies MSPB's appellate procedures with respect to appeals under this subpart, as applicable.

(2) MSPB will refer appeals to an AJ for adjudication. The AJ must make a decision at the close of the review and provide a copy of the decision to each party to the appeal and to OPM.

(c) Pursuant to 5 U.S.C. 9902(h)(4), employees will not be granted interim relief, nor will an action taken against an employee be stayed, unless specifically ordered by the full MSPB following final decision by the Department.

(1) If the interim relief ordered by the full MSPB provides that the employee will return or be present at the place of employment pending the outcome of any petition for review, and the Department determines, in its sole, exclusive, and unreviewable discretion, that the employee's return to the workplace is impracticable or the presence of the employee is unduly disruptive to the work environment, the employee may be placed in an alternative position, or may be placed on excused absence pending final disposition of the employee's appeal.

(2) Nothing in paragraph (c) of this section may be construed to require that any award of back pay or attorney fees be paid before an award becomes final.

(d)(1) An adverse action taken against an employee will be sustained by the MSPB AJ if it is supported by a preponderance of the evidence, unless the employee shows by a preponderance of the evidence—

(i) That there was harmful error in the application of Department procedures in arriving at the decision;

(ii) That the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(iii) That the decision was not in accordance with law.

(2) Neither the MSPB AJ, nor the full MSPB, may reverse the Department action based on the way in which the charge is labeled or the conduct characterized, provided the employee is on notice of the facts sufficient to respond to the factual allegations of the charge.

(3) Neither the MSPB AJ nor the full MSPB may reverse the Department's action based on the way a performance expectation is expressed, provided that the expectation would be clear to a reasonable person.

(e) The Director of OPM may, as a matter of right at any time in the proceeding, intervene or otherwise participate in any proceeding under this section in any case in which the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

(f) Except as provided in 5 U.S.C. 7702, as modified by § 9901.809, any decision under paragraph (b) of this section is final unless a party to the appeal or the Director of OPM petitions the full MSPB for review within 30 days. The Director, after consultation with the Secretary, may petition the full MSPB for review if the Director believes the decision is erroneous and will have a substantial impact on a civil service law, rule, regulation, or policy directive. MSPB, for good cause shown, may extend the filing period.

(g) If the AJ is of the opinion that an appeal could be processed more expeditiously without adversely affecting any party, the AJ may—

(1) Consolidate appeals filed by two or more appellants; or

(2) Join two or more appeals filed by the same appellant and hear and decide them concurrently.

(h)(1) Except as provided in paragraph (h)(2) of this section or as otherwise provided by law, the AJ may require payment by the Department of reasonable attorney fees incurred by an employee if the employee is the prevailing party and the AJ determines that payment by the Department is warranted in the interest of justice. For the purpose of this subpart, such fees are warranted in the interest of justice only when the Department engaged in a prohibited personnel practice or the Department's action was clearly without merit based upon facts known to management when the action was taken.

(2) If the employee is the prevailing party and the decision is based on a finding of discrimination prohibited under 5 U.S.C. 2302(b)(1), the payment of reasonable attorney fees must be in accordance with the standards prescribed in § 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(i)(1) An MSPB AJ may not require any party to engage in settlement discussions in connection with any action appealed under this section. If either party decides that settlement discussions are not appropriate, the matter will proceed to adjudication.

(2) Where the parties agree to engage in formal settlement discussions, these discussions will be conducted by an official other than the AJ assigned to adjudicate the case. Nothing prohibits the parties from engaging in settlement discussions on their own.

(j) If an employee has been removed under subpart G of this part, neither the employee's status under any retirement system established by Federal statute nor any election made by the employee under any such system will affect the employee's appeal rights.

(k)(1) All appeals, including class appeals, will be filed no later than 20 days after the effective date of the action being appealed, or no later than 20 days after the date of service of the Department's decision, whichever is later.

(2) Either party may file a motion to disqualify a party's representative at any time during the proceedings.

(3) The parties may seek discovery regarding any matter that is relevant to any of their claims or defenses. However, by motion, either party may seek to limit such discovery because the burden or expense of providing the material outweighs its benefit, or because the material sought is privileged, not relevant, unreasonably cumulative or duplicative, or can be secured from some other source that is more convenient, less burdensome, or less expensive.

(i) Prior to filing a motion to limit discovery, the parties must confer and attempt to resolve any pending objection(s).

(ii) Neither party may submit more than one set of interrogatories, one set of requests for production, and one set of requests for admissions. The number of interrogatories or requests for production or admissions may not exceed 25 per pleading, including subparts; in addition, neither party may conduct/compel more than 2 depositions.

(iii) Either party may file a motion requesting additional discovery. Such motion may be granted only if the party has shown necessity and good cause to warrant such additional discovery.

(4) Requests for case suspensions must be submitted jointly.

(5) If the AJ determines upon his or her own initiative or upon request by either party that some or all facts are not in genuine dispute, he or she may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 calendar days, issue an order limiting the scope of the hearing or issue a decision without holding a hearing.

(6) The Department's determination regarding the penalty imposed will be given great deference. An arbitrator, AJ, or the full MSPB may not modify the penalty imposed by the Department

unless such penalty is so disproportionate to the basis for the action as to be wholly without justification. In cases of multiple charges, the third party's determination in this regard is based on the justification for the penalty as it relates to the sustained charge(s). When a penalty is mitigated, the maximum justifiable penalty must be applied. The maximum justifiable penalty is the severest penalty that is not so disproportionate to the basis for the action as to be wholly without justification. If the adverse action is based on an MRO, the penalty may only be mitigated as prescribed in § 9901.808.

(7) An initial decision must be made by an AJ no later than 90 days after the date on which the appeal is filed.

(8)(i) The initial AJ decision will become the Department's final decision 30 days after its issuance, unless either party files an RFR with MSPB and the Department concurrently (with service on the other party, as specified by DoD implementing issuances) within that 30-day period in accordance with 5 U.S.C. 9902(h), MSPB's regulations, and this subpart.

(ii) Thirty days after the timely filing of an RFR of an initial AJ decision, that initial AJ decision will become the Department's final decision, and that decision is nonprecedential. MSPB will docket and process a party's RFR as a petition for full MSPB review in accordance with 5 U.S.C. 9902(h), MSPB's regulations, and this subpart, unless the Department serves notice on the parties and MSPB within that 30-day period that it will act on the RFR and review the initial AJ decision. Any decision issued by the Department after reviewing an initial AJ decision is precedential unless—

(A) The Department determines that the DoD decision is not precedential; or

(B) The final DoD decision is reversed or modified by the full MSPB.

(iii) Upon notice that it will reconsider the initial AJ decision, the Department will provide the other party to the case 15 days to respond to the RFR. After receipt of a timely response to the RFR, the Department may—

(A) Where it believes that there has been a material error of fact, or that there is new and material evidence available that, despite due diligence, was not available when the record closed, remand the matter to the assigned AJ for further adjudication or issue a final DoD decision modifying or reversing that initial decision or decision after remand. An AJ decision after remand must be made no later than 30 days after the date of receipt of the remand;

(B) Where the Department determines that the initial AJ decision has a direct and substantial adverse impact on the Department's national security mission, or is based on an erroneous interpretation of law, Governmentwide rule or regulation, or this part, issue a final DoD decision modifying or reversing that initial decision; or

(C) Where the Department determines that the initial AJ decision should serve as precedent, issue a final DoD decision affirming that initial decision for such purposes.

(9) Upon receipt of a final DoD decision issued under paragraph (k)(8)(iii) of this section, an employee or OPM may file a PFR with the full MSPB within 30 days in accordance with 5 U.S.C. 9902(h), MSPB's regulations, and this subpart.

(10) Upon receipt of a petition for full MSPB review or an RFR that becomes a PFR as a result of the expiration of the Department's reconsideration period in accordance with paragraph (k)(8)(iii) of this section, the other party to the case and/or OPM, as applicable, will have 30 days to file a response to the petition. The full MSPB will act on a PFR within 90 days after receipt of a timely response, or the expiration of the response period, as applicable, in accordance with 5 U.S.C. 9902(h), MSPB's regulations, and this subpart.

(11) The Director of OPM, after consultation with the Secretary, may seek reconsideration by MSPB of a final MSPB decision in accordance with 5 U.S.C. 7703(d), which is modified for this purpose. If the Director seeks such reconsideration, the full MSPB must render its decision no later than 60 days after receipt of a response to OPM's petition in support of such reconsideration. The full MSPB must state the reasons for its decision.

(l) Failure of MSPB to meet the deadlines imposed by paragraphs (k)(7), (10), and (11) of this section in a case will not prejudice any party to the case and will not form the basis for any legal action by any party. If the AJ or full MSPB fails to meet the above time limits, the full MSPB will inform the Secretary in writing of the cause of the delay and will recommend future actions to remedy the problem.

(m) The Secretary or an employee adversely affected by a final order or decision of MSPB may seek judicial review under 5 U.S.C. 9902(h)(6). Before seeking judicial review, the Secretary may seek reconsideration by MSPB of a final MSPB decision.

§ 9901.808 Appeals of mandatory removal actions.

(a) Procedures for appeals of adverse actions to MSPB based on MROs will be the same as for other offenses except as otherwise provided by this section.

(b) If one or more MROs are sustained, neither the MSPB AJ nor the full MSPB may mitigate the penalty.

(c) Only the Secretary may mitigate the penalty.

(d) If the MSPB AJ or the full MSPB sustains an employee's appeal based on a finding that the employee did not commit an MRO, the Department is not precluded from subsequently proposing an adverse action (other than an MRO) based in whole or in part on the same or similar evidence.

§ 9901.809 Actions involving discrimination.

(a) In considering any appeal of an action filed under 5 U.S.C. 7702, the Board will apply the provisions of 5 U.S.C. 9902 and this part.

(b) In any appeal of an action filed under 5 U.S.C. 7702 that results in a decision of the Department, if no petition for review of the Department's decision is filed with the full Board, the Department will refer only the discrimination issue to the full Board for adjudication.

(c) All references in 5 U.S.C. 7702 to 5 U.S.C. 7701 are modified to read 5 CFR part 9901, subpart H.

§ 9901.810 Savings provision.

This subpart does not apply to adverse actions proposed prior to the date of an affected employee's coverage under this subpart.

Subpart I—Labor-Management Relations

§ 9901.901 Purpose.

This subpart contains the regulations which implement the provisions of 5 U.S.C. 9902(m) relating to the Department's labor-management relations system. This labor management relations system addresses the unique role that the Department's civilian workforce plays in supporting the Department's national security mission. These regulations recognize the rights of DoD employees to organize and bargain collectively, subject to any exclusion from coverage or limitation on the scope of bargaining pursuant to law, including this subpart and DoD issuances, applicable Presidential issuances (*e.g.* Executive orders), and any other legal authority.

§ 9901.902 Scope of authority.

When a specified category of employees is covered by the labor-

management relations system established under this subpart, the provisions of 5 U.S.C. 7101 through 7135 are modified and replaced by the provisions in this subpart with respect to that category, except as otherwise specified in this subpart. DoD may prescribe implementing issuances to carry out the provisions of this subpart.

§ 9901.903 Definitions.

In this subpart:

Authority means the Federal Labor Relations Authority described in 5 U.S.C. 7104(a).

Board means the National Security Labor Relations Board established by this subpart.

Collective bargaining means the performance of the mutual obligation of a management representative of the Department and an exclusive representative of employees in an appropriate unit in the Department to meet at reasonable times and to bargain in a good faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

Collective bargaining agreement means an agreement entered into as a result of collective bargaining pursuant to the provisions of this subpart.

Component means an organizational unit so prescribed and designated by the Secretary in his or her sole and exclusive discretion, such as, for example, the Office of the Secretary of Defense; the Military Departments, or the Defense Logistics Agency.

Conditions of employment means personnel policies, practices, and matters affecting working conditions—whether established by rule, regulation, or otherwise—except that such term does not include policies, practices, and matters relating to—

(1) Political activities prohibited under 5 U.S.C. chapter 73, subchapter III;

(2) The classification of any position, including any classification determinations under subpart B of this part;

(3) The pay of any employee or for any position, including any determinations regarding pay or adjustments thereto under subpart C of this part; or

(4) Any matters specifically provided for by Federal statute.

Confidential employee means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies.

Consult means to consider the interests, opinions, and recommendations of a recognized labor organization in rendering decisions. This can be accomplished in face-to-face meetings or through other means, *e.g.*, teleconferencing, e-mail, and written communications.

DoD issuance or issuances means a document issued at the DoD or DoD Component level to carry out a policy or procedure of the Department including those issuances implementing this part.

Dues means dues, fees, and assessments.

Exclusive representative means any labor organization which is recognized as the exclusive representative of employees in an appropriate unit consistent with the Department's organizational structure, pursuant to 5 U.S.C. 7111 or as otherwise provided by § 9901.911.

FMCS means Federal Mediation and Conciliation Service.

Grade means a level of work under a position classification or job grading system.

Grievance means any complaint—

(1) By any employee concerning any matter relating to the conditions of employment of the employee;

(2) By any labor organization concerning any matter relating to the conditions of employment of any employee; or

(3) By any employee, labor organization, or the Department concerning—

(i) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) Any claimed violation, misinterpretation, or misapplication of any law, rule, regulation, or DoD issuance issued for the purpose of affecting conditions of employment.

Labor organization means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with the Department concerning grievances and conditions of employment, but does not include—

(1) An organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(2) An organization which advocates the overthrow of the constitutional form of government of the United States;

(3) An organization sponsored by the Department; or

(4) An organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

Management official means an individual employed by the Department in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Department or who has the authority to recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment.

Person has the meaning given that term in 5 U.S.C. 7103(a)(1).

Professional employee has the meaning given that term in 5 U.S.C. 7103(a)(15).

Supervisor means an individual employed by the Department having authority in the interest of the Department to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees; to adjust their grievances; or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment. It also means an individual employed by the Department who exercises supervisory authority over military members of the armed services, such as directing or assigning work or evaluating or recommending evaluations.

§ 9901.904 Coverage.

(a) *Employees covered.* This subpart applies to eligible DoD employees, subject to a determination by the Secretary under § 9901.102(b)(1), except as provided in paragraph (b) of this section. DoD employees who would otherwise be eligible for bargaining unit membership under 5 U.S.C. chapter 71, as modified by § 9901.912, are eligible for bargaining unit membership under this subpart. In addition, this subpart applies to an employee whose employment in the Department has ceased because of any unfair labor practice under § 9901.916 of this subpart and who has not obtained any other regular and substantially equivalent employment.

(b) *Employees excluded.* This subpart does not apply to—

(1) An alien or noncitizen of the United States who occupies a position outside the United States;

(2) A military member of the armed services;

(3) A supervisor or a management official;

(4) Any person who participates in a strike in violation of 5 U.S.C. 7311; or

(5) Any employee excluded pursuant to § 9901.912 or any other legal authority.

§ 9901.905 Impact on existing agreements.

(a) Any provision of a collective bargaining agreement that is inconsistent with this part and/or DoD implementing issuances is unenforceable on the effective date of the applicable subpart(s) or such issuances. The exclusive representative may appeal the Department's determination that a provision is unenforceable to the National Security Labor Relations Board in accordance with the procedures and time limits pursuant to § 9901.908. However, the Secretary, in his or her sole and exclusive discretion, may continue all or part of a particular provision(s) with respect to a specific category or categories of employees and may cancel such continuation at any time; such determinations are not precedential.

(b) Upon request by an exclusive representative, the parties will have 60 days after the effective date of coverage under the applicable subpart and/or implementing issuance to bring into conformance those remaining negotiable terms directly affected by the terms rendered unenforceable by the applicable subpart and/or implementing issuance. If the parties fail to reach agreement by that date, they may utilize the negotiation impasse provisions of § 9901.920 to resolve the matter.

§ 9901.906 Employee rights.

Each employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee will be protected in the exercise of such right. Except as otherwise provided under this subpart, such right includes the right—

(a) To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

(b) To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this subpart.

§ 9901.907 National Security Labor Relations Board.

(a)(1) The National Security Labor Relations Board is composed of at least three members who are appointed by the Secretary for terms of 3 years, except that the appointments of the initial Board members will be for terms of 1, 2, and 3 years, respectively. The Secretary may extend the term of any member beyond 3 years when necessary to provide for an orderly transition and/or appoint the member for up to two additional 1-year terms. The Secretary, in his or her sole and exclusive discretion, may appoint additional members to the Board; in so doing, he or she will make such appointments to ensure that the Board consists of an odd number of members.

(2) Members of the Board will be independent, distinguished citizens of the United States who are well known for their integrity, impartiality, and expertise in labor relations, and/or the DoD mission and/or other related national security matters, and will be able to acquire and maintain an appropriate security clearance. Members may be removed by the Secretary only for inefficiency, neglect of duty, or malfeasance in office.

(3) An individual chosen to fill a vacancy on the Board will be appointed for the unexpired term of the member who is replaced and, at the Secretary's option, an additional term or terms.

(b) The Secretary will appoint two members, with one appointed as Chair of the Board. The third member of the Board will be appointed by the Secretary from a list of three to five nominees developed in consultation with the Director of OPM. The Secretary may appoint additional members as long as the total membership of the Board is an odd number.

(c) A Board vacancy will be filled according to the procedure used to appoint the member whose position was vacated.

(d)(1) The Board will establish procedures for the fair, impartial, and expeditious assignment and disposition of cases. To the extent practicable, the Board will use a single, integrated process to address all matters associated with a negotiations dispute, including unfair labor practices, negotiability disputes, and bargaining impasses. The Board may, pursuant to its regulations, use a combination of mediation, factfinding, and any other appropriate dispute resolution methods to resolve all such disputes at the earliest practicable time and with a minimum administrative burden.

(2) A vote of the majority of the Board (or a three-person panel of the Board) will be final. A vacancy on the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The vote of the Chair will be dispositive in the event of a tie.

(e) Decisions of the Board are final and binding.

(f)(1) Subject to § 9901.909(c), in order to obtain judicial review of a Board decision, except those involving appealable actions taken under subpart G of this part or 5 U.S.C. chapters 43 or 75, a party will request a review of the record of a Board decision by the Authority by filing such a request in writing within 15 days after the issuance of the decision. A copy of the request will be served on all parties. Within 15 days after service of the request, any response will be filed. The Authority will establish, in conjunction with the Board, standards for the sufficiency of the record and other procedures, including notice to the parties. The Authority will accept the findings of fact and interpretations of this part made by the Board and sustain the Board's decision unless the requesting party shows that the Board's decision was—

(i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(ii) Caused by harmful error in the application of the Board's procedures in arriving at such decision; or

(iii) Unsupported by substantial evidence.

(2) The Authority will complete its review of the record and issue a final decision within 30 days after receiving the party's response to such request for review. If the Authority does not issue a final decision within the mandatory time limit established by paragraph (f) of this section, the Authority will be considered to have denied the request for review of the Board's decision, which will constitute a final decision of the Authority and is subject to judicial review in accordance with 5 U.S.C. 7123.

§ 9901.908 Powers and duties of the Board.

(a) The Board may to the extent provided in this subpart and in accordance with regulations prescribed by the Board—

(1) Conduct hearings and resolve complaints of unfair labor practices, including complaints concerning strikes, work stoppages, slowdowns, and picketing, or condoning such

activity by failing to take action to prevent or stop such activity;

(2) Resolve issues relating to the scope of bargaining and the duty to bargain in good faith under § 9901.917;

(3) Resolve disputes concerning requests for information under § 9901.914(b)(5) and (c);

(4) Resolve exceptions to arbitration awards. In doing so, the Board will conduct any review of an arbitral award in accordance with the same standards set forth in 5 U.S.C. 7122(a) as modified in § 9901.923;

(5) Resolve negotiation impasses in accordance with § 9901.920;

(6) Conduct *de novo* review involving all matters within the Board's jurisdiction;

(7) Have discretion to evaluate the evidence presented in the record and reach its own independent conclusions with respect to the matters at issue, but in no case may the Board issue status quo ante remedies, where such remedies are not intended to cure egregious violations of this subpart or where such an award would impose an economic hardship or interfere with the efficiency or effectiveness of the Department's mission or impact national security; and

(8) Resolve disputes regarding the granting of national consultation rights.

(b) Upon the request of a DoD Component or a labor organization concerned, the Board may issue binding Department-wide opinions for matters within its jurisdiction, which may be appealed as if they were decisions of the Board in accordance with § 9901.907(f).

(c) The Board's decisions will be written and published.

§ 9901.909 Powers and duties of the Federal Labor Relations Authority.

(a) To the extent provided in this subpart (pursuant to the authority in 5 U.S.C. 9902), the Federal Labor Relations Authority, in accordance with conforming regulations prescribed by the Authority, may—

(1) Determine the appropriateness of bargaining units pursuant to the provisions of § 9901.912; and

(2) Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer 5 U.S.C. 7111 (relating to the according of exclusive recognition to labor organizations), which is not waived for the purpose of this subpart.

(b) In any matter filed with the Authority, if the responding party believes that the Authority lacks jurisdiction, that party will timely raise the issue with the Authority and simultaneously file a copy of its response with the Board in accordance with regulations established by the Authority. The Authority will promptly transfer the case to the Board, which will determine whether the matter is within the Board's jurisdiction. If the Board determines that the matter is not within its jurisdiction, the Board will return the matter to the Authority for a decision on the merits of the case. The Board's determination with regard to its jurisdiction in a particular matter is final and not subject to review by the Authority. The Authority will promptly decide those cases that the Board has determined are within the jurisdiction of the Authority.

(c) Judicial review of any Authority decision is as prescribed in 5 U.S.C. 7123(a), which is not modified.

§ 9901.910 Management rights.

(a) Subject to paragraphs (b), (c), and (d) of this section, nothing in this subpart may affect the authority of any management official or supervisor of the Department—

(1) To determine the mission, budget, organization, number of employees, and internal security practices of the Department;

(2) To hire, assign, and direct employees in the Department; to assign work, make determinations with respect to contracting out, and to determine the personnel by which Departmental operations may be conducted; to determine the numbers, types, pay schedules, pay bands and/or grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, and the technology, methods, and means of performing work; to assign employees to meet any operational demand; and to take whatever other actions may be necessary to carry out the Department's mission; and

(3) To lay off and retain employees, or to suspend; remove; reduce in pay, pay band, or grade; or take other disciplinary action against such employees or, with respect to filling positions, to make selections for appointments from properly ranked and certified candidates for promotion or from any other appropriate source.

(b) Management is prohibited from bargaining over the exercise of any authority under paragraph (a) of this section or the procedures that it will observe in exercising the authorities set forth in paragraphs (a)(1) and (2) of this section.

(c) Notwithstanding paragraph (b) of this section and at the request of an exclusive representative, management will consult as required under § 9901.917 over the procedures it will observe in exercising the authorities set forth in paragraphs (a)(1) and (2) of this section. Consultation does not require that the parties reach agreement on any covered matter. The parties may, upon mutual agreement, provide for FMCS or another third party to assist in this process. Neither the Board nor the Authority may intervene in this process.

(d) If an obligation exists under § 9901.917 to bargain or consult regarding any authority under paragraph (a) of this section, management will provide notice to the exclusive representative concurrently with the exercise of that authority. However, at its sole, exclusive, and unreviewable discretion, management may provide notice to an exclusive representative of its intention to exercise an authority under paragraph (a) of this section as far in advance as practicable. Further, nothing in paragraph (d) of this section establishes an independent right to bargain or consult.

(e) When an obligation exists under § 9901.913, management will provide the exclusive representative an opportunity to present its views and recommendations regarding the exercise of an authority under paragraph (a) of this section, and the parties will bargain at the level of recognition (unless otherwise delegated below that level, at their mutual agreement) over otherwise negotiable—

(1) Appropriate arrangements for employees adversely affected by the exercise of any authority under paragraph (a)(3) of this section and procedures which management officials and supervisors will observe in exercising any authority under paragraph (a)(3) of this section; and

(2)(i) Appropriate arrangements for employees adversely affected by the exercise of any authority under paragraphs (a)(1) and (2) of this section, provided that the effects of such exercise is foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees in that part of the bargaining unit affected by the change. Appropriate arrangements within the duty to bargain include proposals on matters such as personal hardships and safety measures.

(ii) Appropriate arrangements within the duty to bargain do not include proposals on matters such as—

(A) The routine assignment to specific duties, shifts, or work on a regular or overtime basis; and

(B) Pay or credit for work not actually performed.

(f) Where a proposal falls within the coverage of both paragraph (a)(1) and

(a)(3) of this section or paragraph (a)(2) and (a)(3) of this section, the matter will be determined to be covered by paragraph (a)(1) or (a)(2) of this section for the purpose of collective bargaining.

(g) Nothing in this section will delay or prevent the Department from exercising its authority. Any agreements reached with respect to paragraph (e)(2) of this section will not be precedential or binding on subsequent acts, or retroactively applied, except at the Department's sole, exclusive, and unreviewable discretion.

(h) Nothing in the process established under this section or in § 9901.917, will delay the exercise of a management right under § 9901.910(a)(1), (2) or (3).

(i) Management retains the sole, exclusive, and unreviewable discretion to determine the procedures that it will observe in exercising the authorities set forth in § 9901.910(a)(1) and (2) and to deviate from such procedures, as necessary.

§ 9901.911 Exclusive recognition of labor organizations.

The Department will accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees, in an appropriate unit as determined by the Authority, who cast valid ballots in the election.

§ 9901.912 Determination of appropriate units for labor organization representation.

(a) The Authority will determine the appropriateness of any unit. The Authority will determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this subpart, the appropriate unit should be established on a Department, plant, installation, functional, or other basis and will determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the Department, consistent with the Department's mission and organizational structure and § 9901.107(a).

(b) A unit may not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor may a unit be determined to be appropriate if it includes—

(1) Except as provided under 5 U.S.C. 7135(a)(2), which is not waived for the purpose of this subpart, any management official or supervisor;

(2) A confidential employee;

(3) An employee engaged in personnel work;

(4) An employee in an attorney position;

(5) An employee engaged in administering the provisions of this subpart;

(6) Both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(7) Any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(8) Any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by the Department whose duties directly affect the internal security of the Department, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law or this subpart relating to labor-management relations may not be represented by a labor organization—

(1) Which represents other individuals to whom such provision or subpart applies; or

(2) Which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision or subpart applies.

(d) Two or more units in the Department for which a labor organization is the exclusive representative may, upon petition by the Department or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority will certify the labor organization as the exclusive representative of the new larger unit.

§ 9901.913 National consultation.

(a) If, in connection with the Department or Component, no labor organization has been accorded exclusive recognition on a Department or Component basis, a labor organization that is the exclusive representative of a substantial number of the employees of the Department or Component, as determined in accordance with criteria prescribed by the Board, will be granted national consultation rights by the Department or Component. National consultation rights will terminate when the labor organization no longer meets the criteria prescribed by the Board. Any issue relating to any labor organization's eligibility for or continuation of, national consultation rights will be subject to determination by the Board.

(b)(1) Any labor organization having national consultation rights in connection with any Department or Component under subsection (a) of this section will—

(i) Be informed of any substantive change in conditions of employment proposed by the Department or Component; and

(ii) Be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (b)(1) of this subsection to the Department or Component by any labor organization—

(i) The Department or Component will consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(ii) The Department or Component will provide the labor organization a written statement of the reasons for taking the final action.

(c) Section 9901.913(b) does not apply where the proposed change is bargained at the national level or where continuing collaboration procedures under § 9901.106 apply.

(d) Nothing in this section precludes the Department or the Component from seeking views and recommendations from labor organizations having exclusive representation within the Department or Component which do not have national consultation rights.

(e) Nothing in this section will be construed to limit the right of the agency or exclusive representative to engage in collective bargaining.

§ 9901.914 Representation rights and duties.

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit will be given the opportunity to be represented at—

(i) Any formal discussion between a Department management official(s) and bargaining unit employees, the purpose of which is to discuss and/or announce new or substantially changed personnel policies, practices, or working conditions. This right does not apply to meetings between a management official(s) and bargaining unit

employees for the purpose of discussing operational matters where any discussion of personnel policies, practices or working conditions—

(A) Constitutes a reiteration or application of existing personnel policies, practices, or working conditions;

(B) Is incidental or otherwise peripheral to the announced purpose of the meeting; or

(C) Does not result in an announcement of a change to, or a promise to change, an existing personnel policy(s), practice(s), or working condition(s);

(ii) Any discussion between one or more Department representatives and one or more bargaining unit employees concerning any grievance filed under the negotiated grievance procedure; or

(iii) Any examination of a bargaining unit employee by a representative of the Department in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests such representation. Such right will not apply to investigations conducted by the Offices of the Inspectors General and other independent Department or Component organizations whose mission includes the conduct of criminal investigations, such as the Defense Criminal Investigative Service, the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.

(3) The Department will annually inform its employees of their rights under paragraph (a)(2)(iii) of this section.

(4) Employee representatives employed by the Department are subject to the same expectations regarding conduct as any other employee, whether they are serving in their representative capacity or not.

(5) Except in the case of grievance procedures negotiated under this subpart, the rights of an exclusive representative under this section may not be construed to preclude an employee from—

(i) Being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any grievance or appeal action; or

(ii) Exercising grievance or appellate rights established by law, rule, or regulation.

(b) The duty of the Department or appropriate Component(s) of the Department and an exclusive representative to negotiate in good faith under paragraph (a) of this section includes the obligation—

(1) To approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) To be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) To meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) If agreement is reached, to execute on the request of any party to the negotiation, a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement; and

(5) In the case of the Department or appropriate Component(s) of the Department, to furnish information to an exclusive representative, or its authorized representative, when—

(i) Such information exists, is normally maintained in the regular course of business, and is reasonably available;

(ii) The exclusive representative has requested such information and demonstrated a particularized need for the information in order to perform its representational functions in grievance or appeal proceedings, or in negotiations; and

(iii) Disclosure is not prohibited by law.

(c) Disclosure of information in paragraph (b)(5) of this section does not include the following:

(1) Disclosure prohibited by law or regulations, including, but not limited to, the regulations in this part, Governmentwide rules and regulations, Departmental implementing issuances and other policies and regulations, and Executive orders;

(2) Disclosure of information if adequate alternative means exist for obtaining the requested information, or if proper discussion, understanding, or negotiation of a particular subject within the scope of collective bargaining is possible without recourse to the information;

(3) Internal Departmental guidance, counsel, advice, or training for managers and supervisors relating to collective bargaining;

(4) Any disclosures where an authorized official has determined that disclosure would compromise the Department's mission, security, or employee safety; and

(5) Personal addresses, personal telephone numbers, personal email addresses, or any other information not related to an employee's work.

(d)(1) An agreement between the Department or appropriate Component(s) of the Department and the exclusive representative is subject to approval by the Secretary.

(2) The Secretary will approve the agreement within 30 days after the date the agreement is executed if the agreement is in accordance with the provisions of these regulations and any other applicable law, rule, regulation or similar Department or Component issuance.

(3) If the Secretary does not approve or disapprove the agreement within the 30-day period specified in paragraph (d)(2) of this section, the agreement will take effect and is binding on the Department or Component(s), as appropriate, and the exclusive representative, but only to the extent it is consistent with Federal law, Presidential issuance (*e.g.*, Executive order), Governmentwide regulations, DoD issuances (including implementing issuances and Component issuances), or the regulations in this part.

(4) A local agreement subject to a national or other controlling agreement at a higher level may be approved under the procedures of the controlling agreement or, if none, under Departmental regulations. Bargaining will be at the level of recognition except where delegated.

(5) Provisions in existing collective bargaining agreements are unenforceable if an authorized official determines that they are contrary to Federal law, Presidential issuance (*e.g.* Executive order), Governmentwide regulations, DoD issuances (including implementing issuances and Component issuances), or the regulations in this part.

§ 9901.915 Allotments to representatives.

(a) If the Department has received from an employee in an appropriate unit a properly executed written or electronic assignment which authorizes the Department to deduct from the pay of the employee amounts for the payment of regular and periodic dues and other financial assessments of the exclusive representative of the unit, the Department will honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment will be made at no cost to the exclusive representative or the employee. Except as provided under paragraph (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under paragraph (a) of this section for the deduction of dues with respect to any employee terminates when—

(1) The agreement between the Department or Department Component and the exclusive representative involved ceases to be applicable to the employee; or

(2) The employee is suspended or expelled from membership by the exclusive representative.

(c)(1) Subject to paragraph (c)(2) of this section, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in the Department have membership in the labor organization, the Authority will investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the Department has a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(i) The provisions of paragraph (c)(1) of this section do not apply in the case of any appropriate unit for which there is an exclusive representative.

(ii) Any agreement under paragraph (c)(1) of this section between a labor organization and the Department or Department Component with respect to an appropriate unit becomes null and void upon the certification of an exclusive representative of the unit.

§ 9901.916 Unfair labor practices.

(a) For the purpose of this subpart, it is an unfair labor practice for the Department—

(1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subpart;

(2) To encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) To sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities on an impartial basis to other labor organizations having equivalent status;

(4) To discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information or testimony under this subpart;

(5) To refuse, as determined by the Board, to negotiate in good faith or to consult with a labor organization, as required by this subpart;

(6) To fail or refuse, as determined by the Board, to cooperate in impasse procedures and impasse decisions, as required by this subpart; or

(7) To fail or refuse otherwise to comply with any provision of this subpart.

(b) For the purpose of this subpart, it is an unfair labor practice for a labor organization—

(1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subpart;

(2) To cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this subpart;

(3) To coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) To discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) To refuse, as determined by the Board, to negotiate in good faith or to consult with the Department as required by this subpart;

(6) To fail or refuse, as determined by the Board, to cooperate in impasse procedures and impasse decisions as required by this subpart;

(7)(i) To call, or participate in, a strike, work stoppage, or slowdown, or picketing of the Department in a labor-management dispute if such picketing interferes with an agency's operations; or

(ii) To condone any activity described in paragraph (b)(7)(i) of this section by failing to take action to prevent or stop such activity; or

(8) To otherwise fail or refuse to comply with any provision of this subpart.

(c) Notwithstanding paragraph (b)(7) of this section, informational picketing which does not interfere with the Department's operations will not be considered an unfair labor practice.

(d) For the purpose of this subpart, it is an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by the labor organization, except for failure to meet reasonable occupational standards uniformly required for admission or to tender dues uniformly required as a condition of acquiring and retaining membership. This does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this subpart.

(e) The Board will not consider any unfair labor practice charge filed more than 90 days after the alleged unfair labor practice occurred, unless the Board determines, pursuant to its regulations, that there is good cause for the late filing.

(f) Unfair labor practice issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except where an employee has an option of using the negotiated grievance procedure or an appeals procedure in connection with an adverse action, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(g) The expression of any personal view, argument, opinion, or the making of any statement which publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election, corrects the record with respect to any false or misleading statement made by any person, or informs employees of the Government's policy relating to labor-management relations and representation, will not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions—

(1) Constitute an unfair labor practice under any provision of this subpart; or

(2) Constitute grounds for the setting aside of any election conducted under any provision of this subpart.

§ 9901.917 Duty to bargain and consult.

(a) The Department or appropriate Component(s) of the Department and any exclusive representative in any appropriate unit in the Department, through appropriate representatives, will meet and negotiate in good faith as provided by this subpart for the purpose of arriving at a collective bargaining agreement. In addition, the Department or appropriate Component(s) of the Department and the exclusive representative may determine appropriate techniques, consistent with the operational rules of the Board, to assist in any negotiation.

(b) If bargaining over an initial collective bargaining agreement or any successor agreement is not completed within 90 days after such bargaining

begins, the parties may mutually agree to continue bargaining, or either party may refer the matter to the Board for resolution in accordance with procedures established by the Board. At any time prior to going to the Board, either party may refer the matter to FMCS for assistance.

(c) If the parties bargain during the term of an existing collective bargaining agreement, or in the absence of a collective bargaining agreement, over a proposed change affecting bargaining unit employees' conditions of employment, and no agreement is reached within 30 days after such bargaining begins, either party may refer the matter to the Board for resolution in accordance with procedures established by the Board. Either party may refer the matter to FMCS for assistance at any time.

(d)(1) Management may not bargain over any matters that are inconsistent with law or the regulations in this part, Governmentwide rules and regulations, Departmental implementing issuances and other Department or Component policies, regulations or similar issuances, or Executive orders.

(2) Except as otherwise provided in § 9901.910(c), management has no obligation to bargain or consult over a change to a condition of employment unless the change is otherwise negotiable pursuant to these regulations and is foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees in that part of the bargaining unit affected by the change.

(3) Nothing in paragraphs (b) or (c) of this section prevents management from exercising the rights enumerated in § 9901.910.

(e) If a management official involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Board in accordance with procedures established by the Board.

§ 9901.918 Multi-unit bargaining.

(a) Negotiations can occur at geographical or organizational levels within DoD or a Component with the local exclusive representatives impacted by the proposed change.

(b) Any such negotiations will—

(1) Be binding on all parties afforded the opportunity to bargain with representatives of DoD or the Component;

(2) Supersede all conflicting provisions of applicable collective bargaining agreements of the labor organization(s) affected by the negotiations;

(3) Not be subject to ratification; and

(4) Be subject to impasse resolution by the Board under procedures prescribed by the Board. In resolving impasses, the Board will ensure that agreement provisions are consistent with regard to all similarly situated employees. The determination as to which organizations are covered under multi-unit bargaining is not subject to review by the Board.

(c) Any party may request the services of FMCS to assist with these negotiations.

(d) Labor organizations may request multi-unit bargaining, as appropriate. The Secretary has sole and exclusive authority to grant the labor organizations' request.

(e) The Department will prescribe implementing issuances on the procedures and constraints associated with multi-unit bargaining.

§ 9901.919 Collective bargaining above the level of recognition.

(a) Negotiations can occur at the DoD or Component level with labor organization(s) at an organizational level above the level of exclusive recognition. The decision to negotiate at a level above the level of recognition as well as the unions involved, is within the sole and exclusive discretion of the Secretary to determine and will not be subject to review.

(b) Any such agreement reached in these negotiations will—

(1) Be binding on all subordinate bargaining units of the labor organization(s) afforded the opportunity to bargain at the level of recognition and their exclusive representatives, and DoD and its Components, without regard to levels of recognition;

(2) Supersede all conflicting provisions of other collective bargaining agreements of the labor organization(s), including collective bargaining agreements negotiated with an exclusive representative at the level of recognition, except as otherwise determined by the Secretary;

(3) Not be subject to further negotiations with the labor organizations for any purpose, including bargaining at the level of recognition, except as the Secretary may decide, in his or her sole and exclusive discretion;

(4) Be subject to review by the Board only to the extent provided by this subpart;

(5) Not be subject to ratification;

(6) Be subject to impasse resolution by the Board under procedures prescribed by the Board. In resolving impasses, the Board will ensure that agreement provisions are consistent with regard to all similarly situated employees. The determination as to which organizations are covered under national level bargaining is not subject to review by the Board;

(7) The National Guard Bureau and the Army and Air Force National Guard are excluded from coverage under this section. Where National Guard employees are impacted, negotiations at the level of recognition are authorized; and

(8) Labor organizations may request bargaining above the level of recognition, as appropriate. The Secretary has sole and exclusive authority to grant the labor organizations' request.

§ 9901.920 Negotiation impasses.

(a) If the Department and exclusive representative are unable to reach an agreement under §§ 9901.914, 9901.917, 9901.918, or 9901.919, either party may submit the disputed issues to the Board for resolution.

(b) The Board may take whatever action is necessary and not inconsistent with this subpart to resolve the impasse, to include use of settlement efforts.

(c) Pursuant to §§ 9901.907 and 9901.926, the Board's regulations will provide for a single, integrated process to address all matters associated with a negotiations dispute, including unfair labor practices, negotiability disputes, and bargaining impasses.

(d) Notice of any final action of the Board under this section will be promptly served upon the parties. The action will be binding on such parties during the term of the agreement, unless the parties agree otherwise. Nothing in this section precludes judicial review of any portion of a decision addressing a negotiability dispute or unfair labor practice charge.

§ 9901.921 Standards of conduct for labor organizations.

Standards of conduct for labor organizations are those prescribed under 5 U.S.C. 7120, which is not modified.

§ 9901.922 Grievance procedures.

(a)(1) Except as provided in paragraph (a)(2) of this section, any collective bargaining agreement will provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in paragraphs (d) and (f) of this section, the procedures will be the exclusive procedures for grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in paragraph (a) of this section will be fair and simple, provide for expeditious processing, and include procedures that—

(i) Assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) Assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) Provide that any grievance not satisfactorily settled under the negotiated grievance procedure is subject to binding arbitration, which may be invoked by either the exclusive representative or the Department.

(2) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (b)(1)(iii) of this section will, to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order a stay of any personnel action in a manner similar to the manner described in 5 U.S.C. 1221(c) with respect to the Merit Systems Protection Board and order the Department to take any disciplinary action identified under 5 U.S.C. 1215(a)(3) that is otherwise within the authority of the Department to take.

(3) Any employee who is the subject of any disciplinary action ordered under paragraph (b)(2) of this section may appeal such action to the same extent and in the same manner as if the Department had taken the disciplinary action absent arbitration.

(c) The preceding paragraphs of this section do not apply with respect to any matter concerning—

(1) Any claimed violation of 5 U.S.C. chapter 73, subchapter III (relating to prohibited political activities);

(2) Retirement, life insurance, or health insurance;

(3) Any examination, certification, or appointment;

(4) A rating of record issued under subpart D of this part;

(5) A removal taken under mandatory removal authority as defined in § 9901.717;

(6) Any subject not within the definition of *grievance* in § 9901.903 (*e.g.*, the classification or pay of any position), except for an adverse action under applicable authority, including subpart G of this part, which is not otherwise excluded by paragraph (c) of this section; or

(7) A suspension or removal taken under 5 U.S.C. 7532.

(d) To the extent not already excluded by existing collective bargaining agreements, the exclusions contained in paragraph (c) of this section apply upon the effective date of this subpart, as determined under § 9901.102(b)(1).

(e)(1) An aggrieved employee affected by a prohibited personnel practice under 5 U.S.C. 2302(b)(1) which also falls under the coverage of the negotiated grievance procedure may raise the matter under the applicable statutory procedures, or the negotiated procedure, but not both.

(2) An employee is deemed to have exercised his or her option under paragraph (e)(1) of this section to raise the matter under the applicable statutory procedures, or the negotiated procedure, at such time as the employee timely initiates an action under the applicable statutory or regulatory procedure or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(f)(1) For appealable matters, except for mandatory removal offenses under § 9901.717, an aggrieved employee may raise the matter under an applicable appellate procedure or under the negotiated grievance procedure, but not both. An employee will be deemed to have exercised his or her option under this section when the employee timely files an appeal under the applicable appellate procedures or a grievance in accordance with the provisions of the parties' negotiated grievance procedure, whichever occurs first.

(2) An arbitrator hearing a matter appealable under subpart H of this part is bound by the applicable provisions of this part.

(g)(1) This paragraph applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which paragraph (e) of this section applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (g)(1) of this section may elect not more than one of the procedures described in paragraph (g)(3) of this section with respect thereto. A determination as to whether a particular procedure for seeking a remedy has been elected will be made as set forth under paragraph (g)(4) of this section.

(3) The procedures for seeking remedies described in this paragraph are as follows:

(i) An appeal under subpart H of this part;

(ii) A negotiated grievance under this section; and

(iii) Corrective action under 5 U.S.C. chapter 12, subchapters II and III.

(4) For the purpose of this paragraph, an employee is considered to have elected one of the following, whichever election occurs first:

(i) The procedure described in paragraph (g)(3)(i) of this section if such employee has timely filed a notice of appeal under the applicable appellate procedures;

(ii) The procedure described in paragraph (g)(3)(ii) of this section if such employee has timely filed a grievance in writing in accordance with the provisions of the parties' negotiated procedure; or

(iii) The procedure described in paragraph (g)(3)(iii) of this section if such employee has sought corrective action from the Office of Special Counsel by making an allegation under 5 U.S.C. 1214(a)(1).

(h) An arbitrator hearing a matter under this subpart is bound by all applicable laws, rules, regulations, and DoD issuances, including applicable provisions of this part.

§ 9901.923 Exceptions to arbitration awards.

(a) Either party to arbitration under this subpart may file with the Board an exception to any arbitrator's award, except an award issued in connection with an appealable matter under § 9901.922(f) or matters similar to those covered under 5 U.S.C. 4303 and 7512 arising under other personnel systems, which will be adjudicated under procedures described in § 9901.807(k)(8) through (10). Such procedures are adopted in this subpart for these purposes.

(b) In addition to the bases contained in 5 U.S.C. 7122, exceptions may also be filed by the parties based on the arbitrator's failure to properly consider the Department's national security mission or to comply with applicable NSPS regulations and DoD issuances. The Board may take such action concerning the award as is consistent with this subpart.

(c) If no exception to an arbitrator's award is filed under paragraph (a) of this section during the 30-day period beginning on the date of such award, the award is final and binding. Either party will take the actions required by an arbitrator's final award. The award may include the payment of back pay (as provided under 5 U.S.C. 5596 and 5 CFR part 550, subpart H).

(d) Nothing in this section prevents the Board from determining its own jurisdiction without regard to whether any party has raised a jurisdictional issue.

§ 9901.924 Official time.

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this subpart will be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this section may not exceed the number of individuals designated as representing the Department for such purposes.

(b) Any activities performed by any employee relating to the internal business of the labor organization, including but not limited to the solicitation of membership, elections of labor organization officials, and collection of dues, will be performed during the time the employee is in a nonduty status.

(c) Except as provided in paragraph (a) of this section, the Authority or the Board, as appropriate, will determine whether an employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority or the Board will be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(d) Except as provided in the preceding paragraphs of this section, any employee representing an exclusive representative or, in connection with any other matter covered by this subpart, any employee in an appropriate unit represented by an exclusive representative, will be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

(e) Official time for representational activities will not extend to the representation of employees outside the representative's bargaining unit, except for multi-unit bargaining and/or bargaining above the level of recognition, in accordance with §§ 9901.918 and 9901.919 and mutual agreement of the agency and the exclusive representatives involved.

§ 9901.925 Compilation and publication of data.

(a) The Board will maintain a file of its proceedings.

(b) All files maintained under paragraph (a) of this section will be open to inspection and reproduction in accordance with 5 U.S.C. 552 and 552a. The Board will establish rules in consultation with the Department for maintaining and making available for inspection sensitive information.

§ 9901.926 Regulations of the Board.

The Department may issue initial interim rules for the operation of the Board and will consult with labor organizations granted national consultation rights on the rules. The Board will prescribe and publish rules for its operation in the **Federal Register**.

§ 9901.927 Continuation of existing laws, recognitions, agreements, and procedures.

(a) Except as otherwise provided by §§ 9901.905 or 9901.912, nothing contained in this subpart precludes the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or an agreement that is otherwise consistent with law, the regulations in this part and DoD or Component issuances between the Department or a Component thereof and an exclusive representative of its employees, which is entered into before the effective date of this subpart, as determined under § 9901.102(b)(1).

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838 or any other Executive order, in effect on the effective date of this subpart (as determined under § 9901.102(b)(1)), will remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this subpart or by implementing issuances or decisions issued pursuant to this subpart.

§ 9901.928 Savings provisions.

This subpart does not apply to grievances or other administrative proceedings already pending on the date of coverage of this subpart, as determined under § 9901.102(b)(1). Any remedy that applies after the date of coverage under any provision of this part and that is in conflict with applicable provisions of this part is not enforceable.

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Federal Register

Monday,
February 14, 2005

Part III

Securities and Exchange Commission

17 CFR Part 201
Adjustments to Civil Monetary Penalty Amounts; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–8530; 34–51136; IA–2348; IC–26748]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The Commission is adopting a rule adjusting for inflation the maximum amount of civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002.

EFFECTIVE DATE: February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Richard A. Levine, Assistant General Counsel, Office of the General Counsel, at (202) 942–0890, or M. Owen Donley III, Senior Counsel, Office of the General Counsel, at (202) 942–0998.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements the Debt Collection Improvement Act of 1996 (''DCIA'').[1] The DCIA amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (''FCPIAA'') [2] to require that each Federal agency adopt regulations at least once every four years, adjusting for inflation the maximum amount of the civil monetary penalties (''CMPs'') under the statutes administered by the agency.[3]

A civil monetary penalty (''CMP'') is defined in relevant part as any penalty, fine, or other sanction that: (1) Is for a specific amount, or has a maximum amount, as provided by Federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a Federal court pursuant to Federal law.[4] This definition covers the monetary penalty provisions contained in the statutes administered by the Commission. In addition, this definition encompasses the civil monetary penalties that may be imposed by the Public Company Accounting Oversight Board (the ''PCAOB'') in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).[5]

The DCIA requires that the penalties be adjusted by the cost-of-living adjustment set forth in section 5 of the FCPIAA.[6] The cost-of-living adjustment is defined in the FCPIAA as the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (''CPI–U'') [7] for the month of June for the year preceding the adjustment exceeds the CPI–U for the month of June for the year in which the amount of the penalty was last set or adjusted pursuant to law.[8] The statute contains specific rules for rounding each increase based on the size of the penalty.[9] Agencies do not have discretion whether to adjust a maximum CMP, or the methods used to determine the adjustment. Although the DCIA imposes a 10 percent maximum increase for each penalty for the first adjustment pursuant thereto, that limitation does not apply to the adjustments subsequently made.

The Commission administers four statutes that provide for civil monetary penalties: The Securities Act of 1933; the Securities Exchange Act of 1934; the Investment Company Act of 1940; and the Investment Advisers Act of 1940. In addition, the Sarbanes-Oxley Act of 2002 provides the PCAOB (over which the Commission has jurisdiction) authority to levy civil monetary penalties in its disciplinary proceedings.[10] Penalties administered by the Commission were last adjusted by rules effective February 2, 2001.[11] The DCIA requires the civil monetary penalties to be adjusted for inflation at least once every four years. Therefore, the Commission is directed by statute to increase the maximum amount of each penalty by the appropriate formulated amount.

Accordingly, the Commission is adopting an amendment to 17 CFR part 201 to add section 201.1003 and Table III to Subpart E, increasing the amount of each civil monetary penalty authorized by the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002. The adjustments set forth in the amendment apply to violations occurring after the effective date of the amendment.

II. Summary of the Calculation

To explain the inflation adjustment calculation for CMP amounts that were last adjusted in 2001, we will use the following example. Under the current provisions, the Commission may impose a maximum CMP of $1,200,000 for certain insider trading violations by a controlling person. To determine the new CMP amounts under the amendment, first we determine the appropriate CPI–U for June of the calendar year preceding the year of adjustment. Because we are adjusting CMPs in 2005, we use the CPI–U for June of 2004, which was 189.7. We must also determine the CPI–U for June of the year the CMP was last adjusted for inflation. Because the Commission last adjusted this CMP in 2001, we use the CPI–U for June of 2001, which was 178.0.

Second, we calculate the cost-of-living adjustment or inflation factor. To do this we divide the CPI for June of 2004 (189.7) by the CPI for June of 2001 (178.0). Our result is 1.0657.

Third, we calculate the raw inflation adjustment. To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, $1,200,000 multiplied by the inflation factor of 1.0657 equals $1,278,840.

Fourth, we round the raw inflation amounts according to the rounding rules in Section 5(a) of the FCPIAA. Since we round only the increased amount, we calculate the increased amount by subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increased amount for the maximum penalty in our example is $78,840 (*i.e.*, $1,278,840 less $1,200,000). Under the rounding rules, if the *penalty* is greater than $200,000, we round the *increase* to the nearest multiple of $25,000. Therefore, the maximum penalty increase in our example is $75,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, $1,200,000 plus $75,000 yields a maximum

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[1] Pub. L. 104–134, 110 Stat. 1321–373 (codified at 28 U.S.C. 2461 note).

[2] 28 U.S.C. 2461 note.

[3] Increased CMPs apply only to violations that occur after the increase takes effect.

[4] 28 U.S.C. 2461 note (3)(2).

[5] The Commission may by order affirm, modify, remand, or set aside sanctions, including civil monetary penalties, imposed by the PCAOB. *See* section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in Federal district court pursuant to Section 21(e) of the Exchange Act. As a result, penalties assessed by the PCAOB in its disciplinary proceedings should be considered penalties ''enforced'' by the Commission for purposes of the Act.

[6] 28 U.S.C. 2461 note (5).

[7] 28 U.S.C. 2461 note (3)(3).

[8] 28 U.S.C. 2461 note (5)(b).

[9] 28 U.S.C. 2461 note (5)(a)(1)–(6).

[10] 15 U.S.C. 7215(c)(4)(D).

[11] *See* 17 CFR 201.1002.

inflation adjustment penalty amount of $1,275,000.[12]

III. Related Matters

A. Administrative Procedure Act—Immediate Effectiveness of Final Rule

Under the Administrative Procedure Act (''APA''), to issue a final rule without public notice and comment, an agency must find good cause that notice and comment are impractical, unnecessary, or contrary to public interest.[13] Because the Commission is required by statute to adjust the civil monetary penalties within its jurisdiction by the cost-of-living adjustment formula set forth in section 5 of the FCPIAA, the Commission finds that good cause exists to dispense with public notice and comment pursuant to the notice and comment provisions of the APA.[14] Specifically, the Commission finds that because the adjustment is mandated by Congress and does not involve the exercise of Commission discretion or any policy judgments, public notice and comment is unnecessary.[15]

Under the DCIA, agencies must make the required inflation adjustment to civil monetary penalties: (1) According to a very specific formula in the statute; and (2) within four years of the last inflation adjustment. Agencies have no discretion as to the amount of the adjustment and have limited discretion as to the timing of the adjustment, in that agencies are required to make the adjustment at least once every four years. The regulation discussed herein is ministerial, technical, and noncontroversial. Furthermore, because the regulation concerns penalties for conduct that is already illegal under existing law, there is no need for affected parties to have thirty days prior to the effectiveness of the regulation and amendments during which to adjust their conduct. Accordingly, the Commission believes that there is good cause to make this regulation effective immediately upon publication.

B. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the DCIA, and has no impact on disclosure or compliance costs. Furthermore, Congress, in mandating the inflationary adjustments, has already determined that any possible increase in costs is justified by the overall benefits of such adjustments.

The regulation is in the interest of the public and in furtherance of investor protection. The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the level of deterrence effectuated by the civil monetary penalties, and not allowing such deterrent effect to be diminished by inflation.

C. Paperwork Reduction Act

This rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.[16]

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Claims, Confidential business information, Lawyers, Securities.

Text of Amendment

■ For the reasons set forth in the preamble, part 201, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

Subpart E—Adjustment of Civil Monetary Penalties

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

Authority: Pub. L. 104–134, 110 Stat. 1321.

■ 2. Section 201.1003 and Table III to subpart E are added following Table II to subpart E to read as follows:

§ 201.1003 Adjustment of civil monetary penalties—2005.

As required by the Debt Collection Improvement Act of 1996, the maximum amounts of all civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002 are adjusted for inflation in accordance with Table III to this subpart. The adjustments set forth in Table III apply to violations occurring after February 14, 2005.

TABLE III TO SUBPART E.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	Year penalty amount was last adjusted	Maximum penalty amount pursuant to last adjustment	Adjusted maximum penalty amount
Securities and Exchange Commission				
15 U.S.C. 77t(d)	For natural person	2001	$6,500	$6,500
	For any other person	2001	60,000	65,000
	For natural person/fraud	2001	60,000	65,000
	For any other person/fraud	2001	300,000	325,000
	For natural person/substantial losses or risk of losses to others.	2001	120,000	130,000
	For any other person/substantial losses or risk of losses to others.	2001	600,000	650,000
15 U.S.C. 78ff(b)	Exchange Act/failure to file information documents, reports.	1996	110	110
15 U.S.C. 78ff(c)(1)(B)	Foreign Corrupt Practices—any issuer	1996	11,000	11,000

[12] The adjustments in Table III to subpart E of part 201 reflect that the operation of the statutorily mandated computation, together with rounding rules, does not result in any adjustment to certain penalties. These particular penalties will be subject to slightly different treatment when calculating the next adjustment. Under the statute, when we next adjust these particular penalties, we will be required to use the CPI–U for June of the year when these particular penalties were ''last adjusted,'' rather than the CPI–U for 2005.

[13] 5 U.S.C. 553(b).

[14] 5 U.S.C. 553(b)(3)(B).

[15] A regulatory flexibility analysis under the Regulatory Flexibility Act (''RFA'') is required only when an agency must publish a general notice of proposed rulemaking for notice and comment. *See* 5 U.S.C. 603. As noted above, notice and comment are not required for this final rule. Therefore, the RFA does not apply.

[16] 44 U.S.C. 3501 *et. seq.*

TABLE III TO SUBPART E.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	Year penalty amount was last adjusted	Maximum penalty amount pursuant to last adjustment	Adjusted maximum penalty amount
15 U.S.C. 78ff(c)(2)(C)	Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer.	1996	11,000	11,000
15 U.S.C. 78u–1(a)(3)	Insider Trading—controlling person	2001	1,200,000	1,275,000
15 U.S.C. 78u–2	For natural person	2001	6,500	6,500
	For any other person	2001	60,000	65,000
	For natural person/fraud	2001	60,000	65,000
	For any other person/fraud	2001	300,000	325,000
	For natural person/substantial losses to others/gains to self.	2001	120,000	130,000
	For any other person/substantial losses to others/gain to self.	2001	600,000	650,000
15 U.S.C. 78u(d)(3)	For natural person	2001	6,500	6,500
	For any other person	2001	60,000	65,000
	For natural person/fraud	2001	60,000	65,000
	For any other person/fraud	2001	300,000	325,000
	For natural person/substantial losses or risk of losses to others.	2001	120,000	130,000
	For any other person/substantial losses or risk of losses to others.	2001	600,000	650,000
15 U.S.C. 80a–9(d)	For natural person	2001	6,500	6,500
	For any other person	2001	60,000	65,000
	For natural person/fraud	2001	60,000	65,000
	For any other person/fraud	2001	300,000	325,000
	For natural person/substantial losses to others/gains to self.	2001	120,000	130,000
	For any other person/substantial losses to others/gain to self.	2001	600,000	650,000
15 U.S.C. 80a–41(e)	For natural person	2001	6,500	6,500
	For any other person	2001	60,000	65,000
	For natural person/fraud	2001	60,000	65,000
	For any other person/fraud	2001	300,000	325,000
	For natural person/substantial losses or risk of losses to others.	2001	120,000	130,000
	For any other person/substantial losses or risk of losses to others.	2001	600,000	650,000
15 U.S.C. 80b–3(i)	For natural person	2001	6,500	6,500
	For any other person	2001	60,000	65,000
	For natural person/fraud	2001	60,000	65,000
	For any other person/fraud	2001	300,000	325,000
	For natural person/substantial losses to others/gains to self.	2001	120,000	130,000
	For any other person/substantial losses to others /gain to self.	2001	600,000	650,000
15 U.S.C. 80b–9(e)	For natural person	2001	6,500	6,500
	For any other person	2001	60,000	65,000
	For natural person/fraud	2001	60,000	65,000
	For any other person/fraud	2001	300,000	325,000
	For natural person/substantial losses or risk of losses to others.	2001	120,000	130,000
	For any other person/substantial losses or risk of losses to others.	2001	600,000	650,000
15 U.S.C. 7215(c)(4)(D)(i)	For natural person	2002	100,000	110,000
	For any other person	2002	2,000,000	2,100,000
15 U.S.C. 7215(c)(4)(D)(ii)	For natural person	2002	750,000	800,000
	For any other person	2002	15,000,000	15,825,000

By the Commission.

Dated: February 4, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2664 Filed 2–11–05; 8:45 am]

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Federal Register

Monday,

February 14, 2005

Part IV

The President

Proclamation 7870—To Modify Rules of Origin Under the North American Free Trade Agreement

Memorandum of February 9, 2005—Delegation of Certain Reporting Authority

Federal Register
Vol. 70, No. 29
Monday, February 14, 2005

Presidential Documents

Title 3—

The President

Proclamation 7870 of February 9, 2005

To Modify Rules of Origin Under the North American Free Trade Agreement

By the President of the United States of America

A Proclamation

1. Presidential Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (the ''NAFTA'') with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act''), incorporated in the Harmonized Tariff Schedule of the United States (the ''HTS'') the tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA.

2. Section 202 of the NAFTA Implementation Act provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the NAFTA and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).

3. I have determined that the modifications to the HTS set out in the Annex to this proclamation are appropriate. For goods of Mexico, I have decided that the effective date of the modifications shall be determined by the United States Trade Representative (USTR).

4. Section 604 of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

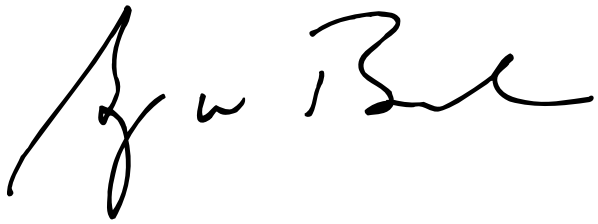
NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 604 of the 1974 Act, section 202 of the NAFTA Implementation Act, and section 301 of title 3, United States Code, do hereby proclaim:

(1) In order to modify the rules of origin under the NAFTA, general note 12 to the HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3) The modifications made by the Annex to this proclamation shall be effective with respect to goods of Canada that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2005. The modifications made by such Annex shall be effective with respect to goods of Mexico that are entered, or withdrawn from warehouse for consumption, on or after a date that the USTR announces in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth 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.



Billing code 3195–01–P

ANNEX

Effective with respect to goods of Canada under the terms of general note 12 to the tariff schedule that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2005, and to goods of Mexico under the terms of general note 12 to the tariff schedule that are entered, or withdrawn from warehouse for consumption, on or after the date that is announced by the United States Trade Representative in a notice published in the *Federal Register*, the tariff classification rules (TCRs) set forth in general note 12(t) to the Harmonized Tariff Schedule of the United States are hereby modified as follows:

1(a). The following language is inserted immediately after the expression "Chapter 9." to appear on the line immediately below such expression; and the existing TCR is designated as "1." and will appear immediately below the inserted language: "**Note:** The following TCR 1 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCRs are inserted immediately below such existing TCR 1, now applicable only to goods of Mexico:

"**Note:** The following TCRs 1 through 17, inclusive, apply only to goods of Canada under the terms of this note:

1. A change to heading 0901 from any other chapter.

2. A change to subheadings 0902.10 through 0902.40 from any other subheading, including another subheading within that group.

3. A change to heading 0903 from any other chapter.

4. A change to subheading 0904.11 from any other chapter.

5. A change to subheading 0904.12 from any other subheading.

6. A change to subheading 0904.20 from any other chapter.

7. A change to heading 0905 from any other chapter.

8. A change to subheading 0906.10 from any other chapter.

9. A change to subheading 0906.20 from any other subheading.

10. A change to a good of heading 0907 from within that heading or any other chapter.

11. A change to a good of any of subheadings 0908.10 through 0909.50 from within that subheading or any other chapter.

12. A change to a good of subheading 0910.10 from within that subheading or any other chapter.

13. A change to subheading 0910.20 from any other chapter.

14. A change to a good of subheading 0910.30 from within that subheading or any other chapter.

15. A change to subheading 0910.40 from any other chapter.

16. A change to subheadings 0910.50 through 0910.91 from any other subheading, including another subheading within that group.

17. (A) A change to dill seeds, crushed or ground, of subheading 0910.99 from dill seeds, neither crushed nor ground, of subheading 0910.99 or any other chapter; or

(B) A change to any other good of subheading 0910.99 from any other chapter."

2(a). The following language is inserted immediately after the expression "Chapter 12." to appear on the line immediately below such expression; and the existing TCR is designated as "1." and will appear immediately below the inserted language: "**Note:** The following TCR 1 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCRs are inserted immediately below such existing TCR 1, now applicable only to goods of Mexico:

"**Note:** The following TCRs 1 through 5, inclusive, apply only to goods of Canada under the terms of this note:

1. A change to headings 1201 through 1206 from any other chapter.

2. A change to subheadings 1207.10 through 1207.60 from any other chapter.

3. A change to a good of subheading 1207.91 from within that subheading or any other chapter.

4. A change to subheading 1207.99 from any other chapter.

5. A change to headings 1208 through 1214 from any other chapter."

3(a). The following language is inserted immediately after the expression "Chapter 13." to appear on the line immediately below such expression; and the existing TCR is designated as "1." and will appear immediately below the inserted language: "**Note:** The following TCR 1 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCRs are inserted immediately below such existing TCR 1, now applicable only to goods of Mexico:

"**Note:** The following TCRs 1 through 3, inclusive, apply only to goods of Canada under the terms of this note:

1. A change to heading 1301 from any other chapter, except from concentrates of poppy straw of subheading 2939.11.

2. A change to subheadings 1302.11 through 1302.32 from any other chapter, except from concentrates of poppy straw of subheading 2939.11.

3. (A) A change to carrageenan of subheading 1302.39 from within that subheading or any other chapter, provided the nonoriginating materials of subheading 1302.39 do not exceed 50 percent by weight of the good; or

(B) A change to any other good of subheading 1302.39 from any other chapter, except from concentrates of poppy straw of subheading 2939.11."

4(a). The following new note is inserted immediately above TCR 7 to chapter 21: "**Note:** The following TCR 7 applies only to goods of Mexico under the terms of this note:".

(b) The following new note and TCRs are inserted immediately below such existing TCR 7 to chapter 21, now applicable only to goods of Mexico:

"Note: The following TCRs 7 through 7A, inclusive, apply only to goods of Canada under the terms of this note:

7. A change to subheading 2103.30 from any other chapter.

7A. (A) A change to mixed condiments or mixed seasonings of subheading 2103.90 from yeasts of subheadings 2102.10 or 2102.20 or any other chapter; or

(B) A change to any other good of subheading 2103.90 from any other chapter."

5(a). The following language is inserted immediately after the expression "Chapter 71." to appear on the line immediately below such expression: "**Note:** The following TCR 1 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCRs are inserted immediately below such existing TCR 1, now applicable only to goods of Mexico:

"Note: The following TCRs 1 through 1G, inclusive, apply only to goods of Canada under the terms of this note:

1. A change to headings 7101 through 7105 from any other chapter.

1A. (A) A change to subheadings 7106.10 through 7106.92 from any other subheading, including another subheading within that group; or

(B) No required change in tariff classification to subheading 7106.91, whether or not there is also a change from another subheading, provided that the nonoriginating materials undergo electrolytic, thermal or chemical separation or alloying.

1B. A change to heading 7107 from any other chapter.

1C. (A) A change to subheadings 7108.11 through 7108.20 from any other subheading, including another subheading within that group; or

(B) No required change in tariff classification to subheading 7108.12, whether or not there is also a change from another subheading, provided that the nonoriginating materials undergo electrolytic, thermal or chemical separation or alloying.

1D. A change to heading 7109 from any other chapter.

1E. A change to subheadings 7110.11 through 7110.49 from any other subheading, including another subheading within that group.

1F. A change to heading 7111 from any other chapter.

1G. A change to heading 7112 from any other heading."

6(a). The following language is inserted immediately above TCR 5 to chapter 85: "**Note:** The following TCR 5 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 5, now applicable only to goods of Mexico:

"**Note:** The following TCR 5 applies only to goods of Canada under the terms of this note:

5. A change to tariff item 8504.40.40 from any other subheading."

7. Existing TCR 8A to chapter 85 is redesignated as 8B, and the following new note and TCR are inserted immediately below existing TCR 8 to chapter 85:

"**Note:** The following TCR 8A applies only to goods of Canada under the terms of this note:

8A. A change to tariff item 8504.90.65 from any other tariff item."

8(a). The following language is inserted immediately above TCR 30 to chapter 84: "**Note:** The following TCR 30 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCRs are inserted immediately below such existing TCR 30, now applicable only to goods of Mexico:

"**Note:** The following TCRs 30 through 30B, inclusive, apply only to goods of Canada under the terms of this note:

30. (A) A change to subheading 8414.40 from any other heading; or

(B) A change to subheading 8414.40 from subheading 8414.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

30A. A change to subheading 8414.51 from any other subheading.

30B. (A) A change to subheadings 8414.59 through 8414.80 from any other heading; or

(B) A change to subheadings 8414.59 through 8414.80 from subheading 8414.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

9(a). The following language is inserted immediately above TCR 17 to chapter 85: "**Note:** The following TCRs 17 through 18 apply only to goods of Mexico under the terms of this note:".

(b). The following new note and TCRs are inserted immediately below such existing TCR 18, now applicable only to goods of Mexico:

"**Note:** The following TCRs 17 through 18, inclusive, apply only to goods of Canada under the terms of this note:

17. (A) A change to subheadings 8509.10 through 8509.30 from any subheading outside that group, except from heading 8501 or tariff items 8509.90.05, 8509.90.25 or 8509.90.45; or

(B) A change to subheadings 8509.10 through 8509.30 from heading 8501 or tariff items 8509.90.05, 8509.90.25 or 8509.90.45, whether or not there is also a change from any subheading outside that group, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

18 A change to subheadings 8509.40 through 8509.80 from any other subheading, including another subheading within that group."

10(a). The following language is inserted immediately above TCR 32 to chapter 85: "**Note:** The following TCRs 32 through 43 apply only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 43, now applicable only to goods of Mexico:

"**Note:** The following TCR 32 applies only to goods of Canada under the terms of this note:

32. A change to subheadings 8516.10 through 8516.80 from any other subheading, including another subheading within that group."

11(a). The following language is inserted immediately above TCR 65 to chapter 85: "**Note:** The following TCRs 65 through 67 apply only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 67, now applicable only to goods of Mexico:

"**Note:** The following TCR 65 applies only to goods of Canada under the terms of this note:

65. (A) A change to subheadings 8518.10 through 8518.29 from any other heading; or

(B) A change to a good of any of subheadings 8518.10 through 8518.29 from within that subheading or any other subheading within heading 8518, including another subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 30 percent where the transaction value method is used, or

(2) 25 percent where the net cost method is used."

12(a). The following language is inserted immediately above TCR 71 to chapter 85: "**Note:** The following TCR 71 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 71, now applicable only to goods of Mexico:

"**Note:** The following TCR 71 applies only to goods of Canada under the terms of this note:

71. (A) A change to subheading 8518.90 from any other heading; or

(B) A change to subheading 8518.90 from any other subheading within heading 8518, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 30 percent where the transaction value method is used, or

(2) 25 percent where the net cost method is used."

13(a). The following language is inserted immediately above TCR 78 to chapter 90: "**Note:** The following TCR 78 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 78, now applicable only to goods of Mexico:

"**Note:** The following TCRs 78 and 78A apply only to goods of Canada under the terms of this note:

78. (A) A change to subheading 9032.10 from any other heading; or

(B) A change to a good of subheading 9032.10 from within that subheading or subheadings 9032.89 through 9032.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used.

78A. (A) A change to subheadings 9032.20 through 9032.89 from any other heading; or

(B) A change to subheadings 9032.20 through 9032.89 from subheading 9032.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

14(a). The following language is inserted immediately above TCR 214 to chapter 84: "**Note:** The following TCR 214 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 214, now applicable only to goods of Mexico:

"**Note:** The following TCR 214 applies only to goods of Canada under the terms of this note:

214. (A) A change to subheading 8473.30 from any other heading; or

(B) No required change in tariff classification to subheading 8473.30, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

15(a). The following language is inserted immediately above TCR 8A to chapter 85: "**Note:** The following TCR 8A applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 8A, now applicable only to goods of Mexico:

"**Note:** The following TCR 8A applies only to goods of Canada under the terms of this note:

8A. (A) A change to subheading 8504.90 from any other heading; or

(B) No required change in tariff classification to subheading 8504.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

16(a). The following language is inserted immediately above TCR 10 to chapter 85: "**Note:** The following TCR 10 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 10, now applicable only to goods of Mexico:

"**Note:** The following TCR 10 applies only to goods of Canada under the terms of this note:

10. (A) A change to subheading 8505.90 from any other heading; or

(B) No required change in tariff classification to subheading 8505.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

17(a). The following language is inserted immediately above TCR 12 to chapter 85: "**Note:** The following TCR 12 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 12, now applicable only to goods of Mexico:

"**Note:** The following TCR 12 applies only to goods of Canada under the terms of this note:

12. (A) A change to subheading 8506.90 from any other heading, except from tariff items 8548.10.05 or 8548.10.15; or

(B) No required change in tariff classification to subheading 8506.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

18(a). The following language is inserted immediately above TCR 14 to chapter 85: "**Note:** The following TCR 14 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 14, now applicable only to goods of Mexico:

"**Note:** The following TCR 14 applies only to goods of Canada under the terms of this note:

14. (A) A change to subheading 8507.90 from any other heading, except from tariff items 8548.10.05 or 8548.10.15; or

(B) No required change in tariff classification to subheading 8507.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

19(a). The following language is inserted immediately above TCR 19 to chapter 85: "**Note:** The following TCR 19 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 19, now applicable only to goods of Mexico:

"**Note:** The following TCR 19 applies only to goods of Canada under the terms of this note:

19. (A) A change to subheading 8509.90 from any other heading; or

(B) No required change in tariff classification to subheading 8509.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

20(a). The following language is inserted immediately above TCR 23 to chapter 85: "**Note:** The following TCR 23 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 23, now applicable only to goods of Mexico:

"**Note:** The following TCR 23 applies only to goods of Canada under the terms of this note:

23. (A) A change to subheading 8511.90 from any other heading; or

(B) No required change in tariff classification to subheading 8511.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

21(a). The following language is inserted immediately above TCR 29 to chapter 85: "**Note:** The following TCR 29 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 29, now applicable only to goods of Mexico:

"**Note:** The following TCR 29 applies only to goods of Canada under the terms of this note:

29. (A) A change to subheading 8514.90 from any other heading; or

(B) No required change in tariff classification to subheading 8514.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

22(a). The following language is inserted immediately above TCR 49 to chapter 85: "**Note:** The following TCR 49 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 49, now applicable only to goods of Mexico:

"**Note:** The following TCR 49 applies only to goods of Canada under the terms of this note:

49. (A) A change to subheading 8516.90 from any other heading; or

(B) No required change in tariff classification to subheading 8516.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

23(a). The following language is inserted immediately above TCR 64 to chapter 85: "**Note:** The following TCR 64 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 64, now applicable only to goods of Mexico:

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"Note: The following TCR 64 applies only to goods of Canada under the terms of this note:

64. (A) A change to subheading 8517.90 from any other heading; or

(B) No required change in tariff classification to subheading 8517.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

24(a). The following language is inserted immediately above TCR 93 to chapter 85: "**Note:** The following TCR 93 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 93, now applicable only to goods of Mexico:

"Note: The following TCR 93 applies only to goods of Canada under the terms of this note:

93. (A) A change to subheading 8529.10 from any other heading; or

(B) No required change in tariff classification to subheading 8529.10, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

25(a). The following language is inserted immediately above TCR 101 to chapter 85: "**Note:** The following TCR 101 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 101, now applicable only to goods of Mexico:

"Note: The following TCR 101 applies only to goods of Canada under the terms of this note:

101. (A) A change to subheading 8529.90 from any other heading; or

(B) No required change in tariff classification to subheading 8529.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

26(a). The following language is inserted immediately above TCR 103 to chapter 85: "**Note:** The following TCR 103 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 103, now applicable only to goods of Mexico:

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"**Note:** The following TCR 103 applies only to goods of Canada under the terms of this note:

103. (A) A change to subheading 8530.90 from any other heading; or

(B) No required change in tariff classification to subheading 8530.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used. "

27(a). The following language is inserted immediately above TCR 108 to chapter 85: "**Note:** The following TCR 108 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 108, now applicable only to goods of Mexico:

"**Note:** The following TCR 108 applies only to goods of Canada under the terms of this note:

108. (A) A change to subheading 8531.90 from any other heading; or

(B) No required change in tariff classification to subheading 8531.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

28(a). The following language is inserted immediately above TCR 111 to chapter 85: "**Note:** The following TCR 111 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 111, now applicable only to goods of Mexico:

"**Note:** The following TCR 111 applies only to goods of Canada under the terms of this note:

111. (A) A change to subheading 8532.90 from any other heading; or

(B) No required change in tariff classification to subheading 8532.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

29(a). The following language is inserted immediately above TCR 114 to chapter 85: "**Note:** The following TCR 114 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 114, now applicable only to goods of Mexico:

"**Note:** The following TCR 114 applies only to goods of Canada under the terms of this note:

114. (A) A change to subheading 8533.90 from any other heading; or

(B) No required change in tariff classification to subheading 8533.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

30(a). The following language is inserted immediately above TCR 122 to chapter 85: "**Note:** The following TCR 122 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 122, now applicable only to goods of Mexico:

"**Note:** The following TCR 122 applies only to goods of Canada under the terms of this note:

122. (A) A change to subheadings 8538.10 through 8538.90 from any other heading; or

(B) A change to subheadings 8538.10 through 8538.90 from any other subheading within that group, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

31(a). The following language is inserted immediately above TCR 139 to chapter 85: "**Note:** The following TCR 139 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 139, now applicable only to goods of Mexico:

"**Note:** The following TCR 139 applies only to goods of Canada under the terms of this note:

139. (A) A change to subheading 8540.91 from any other heading; or

(B) No required change in tariff classification to subheading 8540.91, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

32(a). The following language is inserted immediately above TCR 141 to chapter 85: "**Note:** The following TCR 141 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 141, now applicable only to goods of Mexico:

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"**Note:** The following TCR 141 applies only to goods of Canada under the terms of this note:

141. (A) A change to subheading 8540.99 from any other heading; or

(B) No required change in tariff classification to subheading 8540.99, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

33(a). The following language is inserted immediately above TCR 146 to chapter 85: "**Note:** The following TCR 146 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 146, now applicable only to goods of Mexico:

"**Note:** The following TCR 146 applies only to goods of Canada under the terms of this note:

146. (A) A change to subheading 8543.90 from any other heading; or

(B) No required change in tariff classification to subheading 8543.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

34(a). The following language is inserted immediately above TCR 9 to chapter 90: "**Note:** The following TCR 9 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 9, now applicable only to goods of Mexico:

"**Note:** The following TCR 9 applies only to goods of Canada under the terms of this note:

9. (A) A change to subheading 9005.90 from any other heading; or

(B) No required change in tariff classification to subheading 9005.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

35(a). The following language is inserted immediately above TCR 11 to chapter 90: "**Note:** The following TCR 11 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 11, now applicable only to goods of Mexico:

"**Note:** The following TCR 11 applies only to goods of Canada under the terms of this note:

11. (A) A change to subheadings 9006.91 through 9006.99 from any other heading; or

(B) A change to a good of any of subheadings 9006.91 through 9006.99 from within that subheading, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

36(a). The following language is inserted immediately above TCR 16 to chapter 90: "**Note:** The following TCR 16 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 16, now applicable only to goods of Mexico:

"**Note:** The following TCR 16 applies only to goods of Canada under the terms of this note:

16. (A) A change to subheading 9007.91 from any other heading; or

(B) No required change in tariff classification to subheading 9007.91, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

37(a). The following language is inserted immediately above TCR 19 to chapter 90: "**Note:** The following TCR 19 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 19, now applicable only to goods of Mexico:

"**Note:** The following TCR 19 applies only to goods of Canada under the terms of this note:

19. (A) A change to subheading 9008.90 from any other heading; or

(B) No required change in tariff classification to subheading 9008.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

38(a). The following language is inserted immediately above TCR 26 to chapter 90: "**Note:** The following TCR 26 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 26, now applicable only to goods of Mexico:

"Note: The following TCR 26 applies only to goods of Canada under the terms of this note:

26. (A) A change to subheading 9010.90 from any other heading; or

(B) No required change in tariff classification to subheading 9010.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

39(a). The following language is inserted immediately above TCR 32 to chapter 90: "**Note:** The following TCR 32 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 32, now applicable only to goods of Mexico:

"Note: The following TCR 32 applies only to goods of Canada under the terms of this note:

32. (A) A change to subheading 9013.90 from any other heading; or

(B) No required change in tariff classification to subheading 9013.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

40(a). The following language is inserted immediately above TCR 34 to chapter 90: "**Note:** The following TCR 34 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 34, now applicable only to goods of Mexico:

"Note: The following TCR 34 applies only to goods of Canada under the terms of this note:

34. (A) A change to subheading 9014.90 from any other heading; or

(B) No required change in tariff classification to subheading 9014.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

41(a). The following language is inserted immediately above TCR 56 to chapter 90: "**Note:** The following TCR 56 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 56, now applicable only to goods of Mexico:

"**Note:** The following TCR 56 applies only to goods of Canada under the terms of this note:

56. (A) A change to subheading 9024.90 from any other heading; or

(B) No required change in tariff classification to subheading 9024.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

42(a). The following language is inserted immediately above TCR 60 to chapter 90: "**Note:** The following TCR 60 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 60, now applicable only to goods of Mexico:

"**Note:** The following TCR 60 applies only to goods of Canada under the terms of this note:

60. (A) A change to subheading 9026.90 from any other heading; or

(B) No required change in tariff classification to subheading 9026.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

43(a). The following language is inserted immediately above TCR 64 to chapter 90: "**Note:** The following TCR 64 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 64, now applicable only to goods of Mexico:

"**Note:** The following TCR 64 applies only to goods of Canada under the terms of this note:

64. (A) A change to subheading 9027.90 from any other heading; or

(B) No required change in tariff classification to subheading 9027.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

44(a). The following language is inserted immediately above TCR 68 to chapter 90: "**Note:** The following TCR 68 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 68, now applicable only to goods of Mexico:

"Note: The following TCR 68 applies only to goods of Canada under the terms of this note:

68. (A) A change to subheading 9029.90 from any other heading; or

(B) No required change in tariff classification to subheading 9029.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

45(a). The following language is inserted immediately above TCR 72 to chapter 90: "**Note:** The following TCR 72 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 72, now applicable only to goods of Mexico:

"Note: The following TCR 72 applies only to goods of Canada under the terms of this note:

72. (A) A change to subheading 9030.90 from any other heading; or

(B) No required change in tariff classification to subheading 9030.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

46(a). The following language is inserted immediately above TCR 79 to chapter 90: "**Note:** The following TCR 79 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 79, now applicable only to goods of Mexico:

"Note: The following TCR 79 applies only to goods of Canada under the terms of this note:

79. (A) A change to subheading 9032.90 from any other heading; or

(B) No required change in tariff classification to subheading 9032.90, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used. "

47(a). The following language is inserted immediately above TCR 80 to chapter 90: "**Note:** The following TCR 80 applies only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 80, now applicable only to goods of Mexico:

"Note: The following TCR 80 applies only to goods of Canada under the terms of this note:

80. (A) A change to heading 9033 from any other heading; or

(B) No required change in tariff classification to heading 9033, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

48(a). The following language is inserted immediately above TCR 1 to chapter 95: "Note: The following TCRs 1 through 4, inclusive, apply only to goods of Mexico under the terms of this note:".

(b). The following new note and TCR are inserted immediately below such existing TCR 4, now applicable only to goods of Mexico:

"Note: The following TCR 1 applies only to goods of Canada under the terms of this note:

1. (A) A change to subheadings 9501.00 through 9505.90 from any other chapter; or

(B) A change to a good of any of subheadings 9501.00 through 9505.90 from within that subheading or any other subheading within chapter 95, including another subheading within that group, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(1) 60 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

[FR Doc. 05–2937
Filed 2–11–05; 8:51 am]
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Presidential Documents

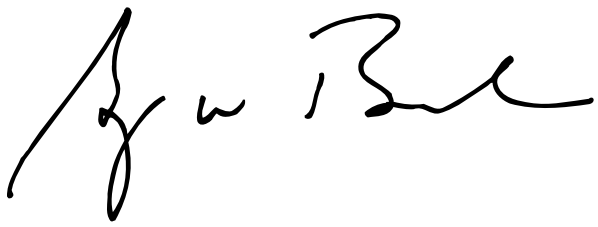
Memorandum of February 9, 2005

Delegation of Reporting Authority

Memorandum for the Chairman of the Railroad Retirement Board

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by section 7(b)(6) of the Railroad Retirement Act and section 12(l) of the Railroad Unemployment Insurance Act to provide the specified report to the Congress.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 9, 2005.

[FR Doc. 05–2938
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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]

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Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

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Default reporting period; comments due by 2-22-05; published 1-21-05 [FR 05-01046]
Mortgage and loan insurance programs:
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Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

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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]

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Boeing; comments due by 2-22-05; published 1-5-05 [FR 05-00170]
Cirrus Design Corp.; comments due by 2-24-05; published 1-13-05 [FR 05-00717]
McDonnell Douglas; comments due by 2-22-05; published 1-5-05 [FR 05-00168]
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Predecessors and successors; section 355(e) gain recognition limitation; comments due by 2-22-05; published 11-22-04 [FR 04-25649]

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Compensation, pension, burial and related benefits:
Nonservice-connected disability and death pensions; comments due by 2-25-05; published 12-27-04 [FR 04-28161]

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 ''P L U S''

(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.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 241/P.L. 109-1

To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami. (Jan. 7, 2005; 119 Stat. 3)

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–052–00001–9)	9.00	[4]Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
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6	(869–052–00007–8)	10.50	Jan. 1, 2004
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900–999	(869–052–00015–9)	60.00	Jan. 1, 2004
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§§ 1.1401–1.1503–2A	(869–052–00090–6)	55.00	Apr. 1, 2004
§§ 1.1551–End	(869–052–00091–4)	55.00	Apr. 1, 2004
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1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
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29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

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