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Contents

Federal Register

Vol. 70, No. 35

Wednesday, February 23, 2005

Agricultural Marketing Service
RULES
Melons grown in—
South Texas, 8709–8712
Spearmint oil produced in—
Far West, 8712–8716

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Natural Resources Conservation Service

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Ventria Bioscience; genetically engineered rice expressing lactoferrin; field test, 8762–8763

Antitrust Division
NOTICES
National cooperative research notifications:
American Society of Health-System Pharmacists, 8823
U.S. Adopted Names Council, 8823
VSI Alliance, 8823–8824

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8765–8766

Centers for Disease Control and Prevention
NOTICES
Organization, functions, and authority delegations:
Board of Scientific Counselors, National Institute for Occupational Safety and Health, 8812

Coast Guard
RULES
Drawbridge operations:
California, 8730
PROPOSED RULES
Drawbridge operations:
Massachusetts, 8751–8752

Commerce Department
See Census Bureau
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8764–8765

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Ukraine, 8783–8784

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8784
Grants and cooperative agreements; availability, etc.:
Gaining Early Awareness and Readiness for Undergraduate Programs, 8784–8788
Leveraging Educational Assistance Partnership and Special Leveraging Educational Assistance Partnership Programs, 8788–8789

Employment and Training Administration
NOTICES
Adjustment assistance:
Aladdin Industries, LLC, 8824
Dorby Group, 8824
Gemini Textile Screenprint, Inc. et al., 8824–8828
Glenshaw Glass Co., 8828
Pfaltzgraff Co., 8828
Rehau Inc., 8828
Spang and Co., 8828
Springs Industries, 8828
Tee Jays Manufacturing Co., Inc., 8828–8829
Venture Industries, 8829
Reports and guidance documents; availability, etc.:
Trade adjustment assistance; training and employment guidance letters to State workforce agencies, 8829–8849

Energy Department
See Federal Energy Regulatory Commission
RULES
Classified information security violations; civil penalties assessment procedural rules; correction, 8716
NOTICES
Atomic energy agreements; subsequent arrangements, 8789
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, 8789

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Texas; correction, 8878
Hazardous waste program authorizations:
Mississippi, 8731–8734
PROPOSED RULES
Air programs:
Stratospheric ozone protection—
Essential use allowances allocation, 8753–8756
Air quality implementation plans:
Preparation, adoption, and submittal—
Prevention of significant deterioration from nitrogren oxides, 8879–8917
Hazardous waste program authorizations:
Mississippi, 8756
NOTICES
Committees; establishment, renewal, termination, etc.:
Science Advisory Board, 8803–8804
Pesticide programs:
Methyl eugenol; tolerance reassessment decision; correction, 8804–8805
Pesticides; emergency exemptions, etc.:
Thiophanate methyl, etc., 8805–8806

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Dichlormid, 8806–8811

Federal Communications Commission
NOTICES
Practice and procedure:
Form 321; mandatory electronic filing via Cable Operations and Licensing System; Media Bureau implementation, 8811

Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8816–8817
Disaster and emergency areas:
Indiana, 8817–8818
West Virginia, 8818

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act) and natural gas companies (Natural Gas Act):
Commission issuances; electronic notification, 8720–8726
NOTICES
Environmental statements; availability, etc.:
AES Ocean Express, L.L.C., 8794–8795
Georgia Power Co., 8795
Environmental statements; notice of intent:
Northern Natural Gas Co., 8796–8797
Hydroelectric applications, 8797–8802
Meetings:
Enbridge Pipelines (KPC), 8802
Regional transmission planning and expansion to facilitate fuel diversity; technical conference, 8802–8803
Applications, hearings, determinations, etc.:
Cheyenne Plains Gas Pipeline Company, L.L.C., 8789–8790
Columbia Gas Transmission Corp., 8790
Discovery Gas Transmission LLC, 8791
El Paso Natural Gas Co., 8791
Green Mountain Power Corp., 8791–8792
Northwest Pipeline Corp., 8792
Panhandle Eastern Pipe Line Co., LP, 8792–8793
Pinelawn Power, LLC, 8793
PJM Interconnection, L.L.C., 8793
Texas Eastern Transmission, LP, 8793–8794
Trunkline LNG Co., LLC, 8794
Wyoming Interstate Co., Ltd., 8794

Federal Reserve System
RULES
Availability of funds and collection of checks (Regulation CC):
Next-day availability checks and local checks; routing number guide; technical amendment, 8716–8718
NOTICES
Banks and bank holding companies:
Permissible nonbanking activities, 8811

Fish and Wildlife Service
RULES
Hunting and fishing:
Refuge-specific regulations
CFR correction, 8748–8749
NOTICES
Endangered and threatened species:
Recovery plans—
Devils River minnow, 8818–8819

Food and Drug Administration
RULES
Public Health Security and Bioterrorism Preparedness and Response Act of 2002; implementation:
Food for human or animal consumption—
Manufacturing, processing, packing, transportation, distribution, etc.; records establishment and maintenance; correction, 8726–8727

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8812
Grants and cooperative agreements; availability, etc.:
Nurse Practitioner and Nurse-Midwifery Education Program guidelines; Advanced Education Nursing Program, 8812–8816

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Industry and Security Bureau
RULES
Export Administration regulations:
Denied persons list and specially designated nationals and blocked persons list; removal from loose-leaf version, 8718–8720

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Net unrealized built-in gain; adjustment, 8727–8729
Safe harbor sale and leaseback transactions; uniform capitalization of interest expense, 8729–8730
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8875–8876
Meetings:
Taxpayer Advocacy Panels, 8876–8877

International Trade Administration
NOTICES
Export trade certificates of review, 8766–8767

International Trade Commission
NOTICES
Import investigations:
Optical disk controller chips and chipsets and products, including DVD players and PC optical storage devices, 8822
Outboard engines from—
Japan, 8822–8823

Justice Department
See Antitrust Division

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Igiugig Native Corp., 8819
Realty actions; sales, leases, etc.:
Alaska, 8819

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel, 8749–8750
NOTICES
Permits:
Endangered and threatened species, 8767–8768
Marine mammals, 8768–8783

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 8820–8822

Natural Resources Conservation Service
NOTICES
Environmental statements; record of decision:
Martinez Creek Watershed, TX, 8763–8764

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8849
Environmental statements; availability, etc.:
P&G-Clairol, Inc., 8855–8856
Walter Reed Army Medical Center, DC, 8856–8857
Meetings:
Reactor Safeguards Advisory Committee, 8857–8858
Regulatory guides; issuance, availability, and withdrawal, 8858–8859
Applications, hearings, determinations, etc.:
Dominion Nuclear Connecticut, Inc., 8851–8855
Duke Energy Corp., 8849–8851

Pipeline and Hazardous Materials Safety Administration
RULES
Pipeline safety:
Onshore oil pipelines; response plans, 8734–8748

Securities and Exchange Commission
NOTICES
Securities:
Suspension of trading—
21st Century Technologies, Inc., 8859
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 8859–8861
National Association of Securities Dealers, Inc., 8862–8867
New York Stock Exchange, 8867–8868

Sentencing Commission, United States
See United States Sentencing Commission

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
Meridian Venture Partners II, L.P., 8872

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 8872–8874

Surface Transportation Board
NOTICES
Meetings:
Rail rate changes under the stand-alone cost methodology, 8874
Railroad operation, acquisition, construction, etc.:
R.J. Corman Railroad Property, LLC, 8875

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board
PROPOSED RULES
Committees; establishment, renewal, termination, etc.:
Driver's Licenses and Personal Identification Cards Negotiated Rulemaking Advisory Committee, 8756–8761

Treasury Department
See Internal Revenue Service
See United States Mint
NOTICES
Meetings:
Federal Tax Reform, President's Advisory Panel, 8875

United States Mint
NOTICES
Meetings:
Citizens Coinage Advisory Committee, 8877

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 8868–8872

Separate Parts In This Issue

Part II
Environmental Protection Agency, 8879–8917

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
979.....8709
985.....8712

10 CFR
824.....8716

12 CFR
229.....8716

15 CFR
736.....8718
752.....8718
764.....8718

18 CFR
5.....8720
16.....8720
156.....8720
157.....8720
385.....8720

21 CFR
1.....8726

26 CFR
1 (2 documents) 8727, 8729

33 CFR
117.....8730

Proposed Rules:
117.....8751

40 CFR
52.....8878
271.....8731

Proposed Rules:
51.....8880
52.....8880
82.....8753
271.....8756

49 CFR
194.....8734

Proposed Rules:
Subt. A.....8756

50 CFR
32.....8748
679.....8749

Rules and Regulations

Federal Register
Vol. 70, No. 35
Wednesday, February 23, 2005

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV05–979–1 FIR]

Melons Grown in South Texas; Temporary Suspension of Handling and Assessment Collection Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule suspending, for the 2004–05 fiscal period, the minimum grade, quality, maturity, container, pack, inspection, assessment collection, and other related requirements currently prescribed under the South Texas melon (cantaloupes and honeydews) marketing order (order). It also continues in effect the action that suspends reporting requirements, except for the acreage planting reports, which continue to be required during the suspension period. The order regulates the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). This rule reduces handler costs while the industry evaluates whether the marketing order should be continued.

EFFECTIVE DATE: March 25, 2005.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; Telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule continues in effect the action that suspends, for the remainder of the 2004–05 fiscal period, the minimum grade, quality, maturity, container, pack, inspection, and other related requirements previously prescribed under the South Texas melon order. For the purpose of this rule, these requirements are referred to as handling requirements. It also continues in effect the suspension of the assessment collection and all reporting requirements, with the exception of the acreage planting reports, which continue to be required during the suspension period. This rule reduces industry expenses, while the industry evaluates whether the marketing order should be continued.

Section 979.52 of the order provides authority for grade, size, maturity, quality, and pack regulations for any variety of melons grown in the production area during any period. Section 979.52 also authorizes the modification, suspension, or termination of regulations issued under the order. Authority to terminate or suspend provisions of the order is specified in § 979.84.

Section 979.60 provides that whenever melons are regulated pursuant to § 979.52, such melons must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of such inspection and certification is borne by handlers.

Prior to November 27, 2004, fresh market shipments of South Texas melons were required to be inspected and were subject to minimum grade, quality, maturity, and container and pack requirements. Section 979.304 Handling regulation (7 CFR part 979.304) stated that no handler could handle cantaloupes grown in the production area unless such cantaloupes met the requirements specified for U.S. Commercial grade or better, except that not more than 8 percent serious damage including not more than 5 percent decay would be permitted. Honeydew melons were also required to meet the requirements of U.S. Commercial grade except that not more than 20 percent serious damage was allowed including not more than 10 percent for melons affected by decay. In addition, the combined juice from the edible portion of a sample of honeydews selected at random could contain not less than 8 percent soluble solids as determined by an approved hand refractometer. Individual containers of honeydew melons could contain no less than 25 percent U.S. Commercial grade or better quality. Individual containers

of cantaloupe and honeydew melons could contain not more than double the specified lot tolerance for scorable defects.

The order's container and pack requirements were also specified in § 979.304. Cantaloupes and honeydew melons were required to be packed in fiberboard cartons of specified dimensions. Each carton was required to be marked to indicate the count; the name, address, and zip code of the shipper; the name of the product; and the words ''Produce of U.S.A.'' or ''Product of U.S.A.'' Additionally, if the carton was not clean and bright in appearance without marks, stains, or other evidence of previous use, the carton was required to be marked with the words ''USED BOX.'' Honeydew melons were also required to be packed in bulk containers with specified dimensions.

Section 979.304 further included a minimum quantity exemption of 120 pounds per day, and reporting and safeguard requirements for special purpose and experimental shipments. Related provisions appeared in the regulations in § 979.106 *Registered handler*; § 979.152 *Handling of culls*; and § 979.155 *Safeguards*.

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements that have been issued on a continuing basis for South Texas melons. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its September 16, 2004, meeting, the Committee unanimously recommended suspending, for the 2004–05 fiscal period, the handling, assessment collection, and all reporting requirements, except for the acreage planting reporting requirement. The 2004–05 fiscal period began October 1, 2004, and ends September 30, 2005.

The objective of the handling and inspection requirements is to ensure that only acceptable quality cantaloupe and honeydew melons enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to growers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes that the cost of inspection and certification (mandated when minimum requirements are in effect) would exceed the benefits derived, especially in view of reduced melon acreage and yields in recent years.

The South Texas cantaloupe and honeydew melon industry has been shrinking due to the inability to provide dependable supplies because of adverse weather conditions, a lack of success in breeding improved quality melons buyers desire, and intense foreign and domestic competition. South Texas historically had enjoyed a marketing window of approximately six weeks beginning about May 1 each season. That window has steadily eroded in recent years due to strong competition and quality problems with Texas melons. As a result, acreage has decreased dramatically from a high of 27,463 acres in 1987 to 4,780 in 2004. The number of producers and handlers also has declined.

The Committee recommended suspending the regulations and assessment collections for one fiscal period in hopes that new plants might be developed and help revive the industry. Some in the industry believe that the order is no longer needed. The suspensions are designed to decrease handler costs, while the industry evaluates whether the marketing order should be continued.

Underlying economics for the South Texas melon industry did not justify continuing the regulations for 2004–05. Too little revenue would be generated for an effective marketing and promotion program, and buyer demands have superseded the regulations in dictating quality requirements. Buyers have been requesting better quality melons.

This rule continues in effect the action that enables handlers to ship melons without regard to the minimum grade, quality, maturity, container, pack, inspection, and related requirements for the remainder of the 2004–05 fiscal period. It continues in effect the action that decreases industry expenses associated with inspection and assessments. This rule does not restrict handlers from seeking inspection on a voluntary basis.

Consistent with the temporary suspension of § 979.304, this rule also continues in effect the action that suspends § 979.106, § 979.152, and § 979.155 of the rules and regulations in effect under the order for the 2004–05 fiscal period. Section 979.106 provided for the registration of handlers, § 979.152 detailed procedures for the handling of cull melons, and § 979.155 provided safeguard requirements for special purpose shipments and established reporting and recordkeeping requirements when such exemptions were in place.

In addition, this rule also continues in effect the action that temporarily suspends § 979.219 requiring that an assessment rate of $0.09 per carton of melons be collected from South Texas melon handlers. Consistent with suspension of § 979.219, § 979.112 specifying late payment charges on delinquent assessments is also suspended. Authorization to assess melon handlers enables the Committee to incur expenses that are necessary to administer the marketing order. With the suspension of handling, inspection, and assessment requirements, a limited Committee budget is needed for program administration and the collection of the acreage planting reports.

For the period of the suspension, the Committee recommended a reduced budget of $70,959 to cover anticipated expenses. Adequate funds to cover these expenses are currently in the Committee's reserves.

Final Regulatory Flexibility Analysis

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

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

There are approximately 16 handlers of South Texas melons who are subject to regulation under the marketing order and approximately 29 melon growers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural growers are defined as those having annual receipts of less than $750,000.

Most of the handlers are vertically integrated corporations involved in growing, shipping, and marketing melons. For the 2003–04 marketing year, the industry's 16 handlers shipped melons produced on 4,780 acres with the average and median volume handled being 89,012 and 10,655 containers,

respectively. In terms of production value, total revenue for the 16 handlers was estimated to be $12,175,919, with the average and median revenues being $760,996 and $91,094, respectively.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternative crops, like onions.

Based on the SBA's definition of small entities, the Committee estimates that all of the 16 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises might push a number of these handlers above the $5,000,000 annual receipt threshold. Of the 29 growers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, the majority of growers may be classified as small entities.

At its September 16, 2004, meeting, the Committee unanimously recommended suspending, for the 2004–05 fiscal period, the handling, assessment collection, and all reporting requirements, except for the acreage planting reporting requirement. The Committee requested that the rule be effective for the 2004–05 fiscal period, which began October 1, 2004, and ends September 30, 2005.

The objective of the handling and inspection requirements was to ensure that only acceptable quality cantaloupe and honeydew melons entered fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to growers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes that the cost of inspection and certification (mandated when minimum requirements are in effect) would exceed the benefits derived, especially in view of reduced melon acreage and yields in recent years. This results in reduced melon shipments and reduced assessment income.

The South Texas cantaloupe and honeydew melon industry has been shrinking due to the inability to provide dependable supplies because of adverse weather conditions, a lack of success in breeding improved quality melons buyers desire, and intense foreign and domestic competition. South Texas historically had enjoyed a marketing window of approximately six weeks beginning about May 1 each season. That window has steadily eroded in recent years due to strong competition and quality problems in Texas melons. As a result, acreage has decreased dramatically from a high of 27,463 acres in 1987 to 4,780 in 2004. The number of producers and handlers also has declined. Some in the industry believe that the marketing order is no longer needed.

Underlying economics for the South Texas melon industry did not justify continuing the regulations for 2004–05. Too little assessment revenue would be generated for an effective marketing and promotion program, and buyer demands have superseded the regulations in dictating quality requirements.

This rule continues in effect the action that enables handlers to ship melons without regard to the minimum grade, quality, maturity, container, pack, inspection, and related requirements for the remainder of the 2004–05 fiscal period. It decreases industry expenses associated with inspection and assessments. This rule does not restrict handlers from seeking inspection on a voluntary basis.

In addition, this rule also continues in effect the action that suspends § 979.219 requiring that an assessment rate of $0.09 per carton of melons be collected from South Texas melon handlers. Consistent with the suspension of § 979.219, § 979.112 specifying late payment charges on delinquent assessments continues to be suspended. Authorization to assess melon handlers enables the Committee to incur expenses that are necessary to administer the marketing order.

With the suspension of handling, inspection, and assessment requirements, a limited Committee budget is needed for program administration and collection of acreage planting reports. For the period of the suspension, the Committee recommended a reduced budget of $70,959 to cover anticipated expenses. Adequate funds to cover these expenses are currently in the Committee's reserves.

The Committee anticipates that this rule will not negatively impact small businesses. This rule continues in effect the action that suspends minimum grade, quality, maturity, container, pack, inspection, assessment collection, some reporting, and other related requirements. Further, this rule continues in effect the action that allows handlers and growers the choice to obtain inspection for melons, as needed, thereby reducing costs for the industry. The total cost of inspection and certification for fresh shipments of South Texas melons during the 2003–04 marketing season was $46,000. These costs will not be incurred during the 2004–05 season.

The suspension of the assessment collection requirements for the 2004–05 season also results in some cost savings. Assessment collections during the 2003–04 season totaled $102,988. Absent the suspension of § 979.219, assessments collected during the 2004–05 season would have been about $292,840.

The Committee considered suspension of the marketing order, but wished to continue receiving data on plantings for a one-year period before deciding whether the order should be continued.

It is possible that the Committee might recommend that the order be terminated after the 2004–05 fiscal period if conditions do not improve. Some Committee members felt that termination was premature, while others felt the order should be immediately eliminated. The Committee recommended the suspension of regulations for one fiscal period as an orderly and reasonable compromise. This will enable the Committee to study the impact of suspension, allow the continued collection of data on acreage projections, and minimize disruption if the Committee chooses to recommend termination after the 2004–05 fiscal period.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. Suspension of some of the reporting requirements is expected to reduce the reporting burden on small or large South Texas melon handlers by 6.12 hours, and should further reduce industry expenses. During the suspension period, handlers will not have to file the following forms with the Committee: Application for Registered Handler (1.74 burden hours); Certification for Handling Melons for Processing (0.70 burden hours); Relief or Charity Certification for Handling Melons Which Fail to Meet the South Texas Rules and Regulations (0.35 burden hours); Certificate of Privilege (0.83 burden hours); and Special Purpose Shipment (2.50 hours). This rule will not impose any additional reporting or recordkeeping requirements

on either small or large melon handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 16, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on November 26, 2004. Copies of the rule were mailed by the Committee's staff to all Committee members and melon handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended January 25, 2005. One comment was received during that period. The comment concerned melon imports from Mexico and is, therefore, not applicable to this rulemaking action because the South Texas melon marketing order does not impact melon imports. The comment also stated that the Committee should be disbanded. The Committee is authorized under the marketing order and the Act. No changes are made as a result of the comment.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the regulations suspended in this final rule, which adopts, without change, the interim final rule, as published in the **Federal Register** (69 FR 68761, November 26, 2004), no longer tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

PART 979—MELONS GROWN IN SOUTH TEXAS

n Accordingly, the interim final rule amending 7 CFR part 979 which was published at 69 FR 68761 on November 26, 2004, is adopted as a final rule without change.

Dated: February 16, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–3389 Filed 2–22–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV04–985–2 IFR–A]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2004–2005 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends a prior interim final rule that increased the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year. The prior interim final rule increased the Native spearmint oil salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent. This rule increases the Native spearmint oil salable quantity by an additional 171,873 pounds from 1,095,689 pounds to 1,267,562 pounds, and the allotment percentage by an additional 8 percent from 51 percent to 59 percent. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, unanimously recommended this rule to avoid extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2004, through May 31, 2005; comments received by April 25, 2005, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; e-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before

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

This rule amends an interim final rule that was published in the **Federal Register** on October 21, 2004 (69 FR 61755). That rule, which was based on two unanimous Committee recommendations increased the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year, which ends on May 31, 2005. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its September 13, 2004, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 2004–2005 marketing year be increased by 12 percent from 36 percent to 48 percent. The Committee held another meeting on October 6, 2004, where, based on an unanticipated increase in demand, they unanimously recommended that the allotment percentage for Native spearmint oil for the 2004–2005 marketing year be increased by an additional 3 percent from 48 percent to 51 percent. Specifically, that rule increased the salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent for Native spearmint oil for the 2004–2005 marketing year.

This amended interim final rule, which is based on a unanimous Committee recommendation made at a meeting on January 20, 2005, increases the salable quantity an additional 171,873 pounds from 1,095,689 pounds to 1,267,562 pounds, and the allotment percentage an additional 8 percent from 51 percent to 59 percent for Native spearmint oil for the 2004–2005 marketing year.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 2004–2005 marketing year were recommended by the Committee at its October 8, 2003, meeting. The Committee recommended salable quantities of 766,880 pounds and 773,474 pounds, and allotment percentages of 40 percent and 36 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the **Federal Register** on January 23, 2004 (69 FR 3272). Comments on the proposed rule were solicited from interested persons until February 23, 2004. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 2004–2005 marketing year was published in the **Federal Register** on March 22, 2004 (69 FR 13213). Subsequently, an interim final rule made more Native spearmint oil available for the 2004–2005 marketing year. This rule was published in the **Federal Register** on October 21, 2004 (69 FR 61755). No timely comments were received in response to the interim final rule.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

Taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the 2004–2005 marketing year salable quantity of 1,095,689 pounds will therefore be increased to 1,267,562 pounds.

The original total industry allotment base for Native spearmint oil for the 2004–2005 marketing year was established at 2,148,539 pounds and was revised at the beginning of the 2004–2005 marketing year to 2,148,410 pounds to reflect a 2003–2004 marketing year loss of 129 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,148,410 pounds is applied to the originally established allotment percentage of 36 percent, the 2004–2005 marketing year salable quantity of 773,474 pounds is effectively modified to 773,428 pounds.

By increasing the salable quantity and allotment percentage, this amended interim final rule makes an additional amount of Native spearmint oil available by releasing oil from the reserve pool. When applied to each individual producer, the 8 percent allotment percentage increase allows each producer to take up to an amount equal to 8 percent of their allotment base from their Native spearmint oil reserve. This action makes an additional 118,990 pounds of Native spearmint oil available to the market.

The following table summarizes the Committee recommendation:

Native Spearmint Oil Recommendation

(A) Estimated 2004–2005 Allotment Base—2,148,539 pounds. This is the estimate that the original 2004–2005 Native spearmint oil salable quantity and allotment percentage was based on.

(B) Revised 2004–2005 Allotment Base—2,148,410 pounds. This is 129 pounds less than the estimated allotment base of 2,148,539 pounds. This is less because some producers failed to produce all of their 2003–2004 allotment.

(C) Initial 2004–2005 Allotment Percentage—36 percent. This was recommended by the Committee on October 8, 2003.

(D) Initial 2004–2005 Salable Quantity—773,474. This figure is 36 percent of 2,148,539 pounds.

(E) Initial Adjustment to the 2004–2005 Salable Quantity—773,428 pounds. This figure reflects the salable quantity initially available after the beginning of the 2004–2005 marketing year due to the 129 pound reduction in the industry allotment base to 2,148,410 pounds.

(F) First Revised Increase in Allotment Percentage—15 percent. The Committee recommended a 12 percent increase at its September 13, 2004, meeting and an additional 3 percent increase at its October 6, 2004, meeting, for a total increase of 15 percent which was effective on October 21, 2004.

(G) Second Revised Increase in Allotment Percentage—8 percent. This was recommended by the Committee on January 20, 2005.

(H) First Revised 2004–2005 Allotment Percentage—51 percent. This figure was derived by adding the first revised increase of 15 percent to the initial 2004–2005 allotment percentage of 36 percent.

(I) Second Revised 2004–2005 Allotment Percentage—59 percent. This figure was derived by adding the 8 percent to the first revised 2004–2005 allotment percentage of 51 percent.

(J) First Revised Calculated 2004–2005 Salable Quantity—1,095,689 pounds. This figure is 51 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(K) Second Revised Calculated 2004–2005 Salable Quantity—1,267,562 pounds. This figure is 59 percent of the

revised 2004–2005 allotment base of 2,148,410 pounds.

(L) First Revised Computed Increase in the 2004–2005 Salable Quantity—322,262 pounds. This figure is 15 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(M) Second Revised Computed Increase in the 2004–2005 Salable Quantity—171,873 pounds. This figure is 8 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

In making this second revision recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and the report given by the Committee manager from handlers and producers who were not in attendance. The 2004–2005 marketing year began on June 1, 2004. Handlers have reported purchases of 1,055,641 pounds of Native spearmint oil for the period of June 1, 2004, through January 20, 2005. This amount exceeds the five-year average of 852,259 pounds for this period by 203,352 pounds. On average, handlers indicated that the estimated total demand for the 2004–2005 marketing year could range from a minimum of 1,212,000 pounds to as much as 1,242,000 pounds. This amount exceeds the five-year average for an entire marketing year of 973,456 pounds by as little as 238,544 pounds and as much as 268,544 pounds. Therefore, based on past history, the industry may not be able to meet market demand without this increase. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2004–2005 marketing year, it had anticipated that the year would end with an ample available supply.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2004–2005 marketing year should be increased to 1,267,562 pounds and 59 percent, respectively.

This amended rule further relaxes the regulation of Native spearmint oil and will allow for market needs and improve producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2004–2005 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2004–2005 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 8 handlers of spearmint oil who are subject to regulation under the marketing order and approximately 98 producers of Class 3 (Native) spearmint oil in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 15 of the 98 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule amends an interim final rule that was published in the **Federal Register** on October 21, 2004 (69 FR 61755). That rule, which was based on two unanimous Committee recommendations, increased the quantity of Native spearmint oil that

handlers may purchase from, or handle for, producers during the 2004–2005 marketing year, which ends on May 31, 2005. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its September 13, 2004, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 2004–2005 marketing year be increased by 12 percent from 36 percent to 48 percent. The Committee held another meeting on October 6, 2004, where, based on an unanticipated increase in demand, they unanimously recommended that the allotment percentage for Native spearmint oil for the 2004–2005 marketing year be increased by an additional 3 percent from 48 percent to 51 percent. Specifically, that rule increased the salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent for Native spearmint oil for the 2004–2005 marketing year.

This amended interim final rule, which is based on a unanimous Committee recommendation made at a meeting on January 20, 2005, increases the salable quantity an additional 171,873 pounds from 1,095,689 pounds to 1,267,562 pounds, and the allotment percentage an additional 8 percent from 51 percent to 59 percent for Native spearmint oil for the 2004–2005 marketing year. This rule relaxes the regulation of Native spearmint oil and will allow producers to meet market needs and improve returns.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The recommended salable percentages, upon which 2004–2005 producer allotments are based, are 40 percent for Scotch and 59 percent for Native (a 23 percentage point increase from the original salable percentage of 36 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.35 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed if volume controls were not used (*i.e.*, if the salable percentages were set at 100 percent). A previous price decline estimate of $1.71 per pound was based on the 2004–2005 salable percentages (40 percent for Scotch and 36 percent for Native) published in the **Federal Register** on March 22, 2004 (69 FR 13213).

The 2003 Far West producer price for both classes of spearmint oil was $9.50 per pound, which is below the average of $11.33 for the period of 1980 through 2002, based on National Agricultural Statistics Service data. The surplus situation for the spearmint oil market that would exist without volume controls in 2004–2005 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meetings, the Committee considered alternatives to the 8 percent increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases ranging from 7 percent to 10 percent. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Further, the Committee meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the September 13, 2004, October 6, 2004, and the January 20, 2005, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a revision to the salable quantity and allotment percentage for Native spearmint oil for the 2004–2005 marketing year. A 60-day comment period is provided. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this amended interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2005; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the remainder of the marketing year, thus making the additional oil available as soon as is practicable is beneficial to both handlers and producers; (3) the Committee unanimously recommended these changes at public meetings and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

n For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

n 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

n 2. In § 985.223, paragraph (b) is revised to read as follows:

(**Note:** This section will not appear in the annual Code of Federal Regulations.)

§ 985.223 Salable quantities and allotment percentages—2004–2005 marketing year.

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,267,562 pounds and an allotment percentage of 59 percent.

Dated: February 16, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–3480 Filed 2–18–05; 9:05 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 824

[Docket No. SO–RM–00–01]

RIN 1992–AA28

Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations; Correction

AGENCY: Office of Security, Department of Energy.

ACTION: Final rule; correction.

SUMMARY: The Department of Energy published a final rule on January 26, 2005, establishing 10 CFR Part 824 to implement section 234B of the Atomic Energy Act of 1954. This document corrects an inadvertent omission in one sentence of the final rule.

DATES: This final rule is effective on February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Geralyn Praskievicz, (202) 586–4451 or, JoAnn Williams, (202) 586–6899.

SUPPLEMENTARY INFORMATION: This document makes a correction to a final rule that was published in the **Federal Register** on January 26, 2005 (67 FR 3599).

In rule document FR Doc. 05–1303, appearing on page 3599, in the issue of Wednesday, January 26, 2005, the following correction is made.

PART 824—[CORRECTED]

§ 824.2 [Corrected]

n Beginning on page 3607, in the third column, § 824.2(c) is corrected to read as follows:

* * * * *

(c) *Individual employees.* No civil penalty may be assessed against an individual employee of a contractor or any other entity which enters into an agreement with DOE.

Issued in Washington, DC, on February 16, 2005.

Glenn S. Podonsky,

Director, Office of Security and Safety Performance Assurance.

[FR Doc. 05–3423 Filed 2–22–05; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1224]

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 Detroit branch office of the Federal Reserve Bank of Chicago and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Cleveland and delete the reference to the Houston branch office of the Federal Reserve Bank of Dallas and reassign the routing numbers listed under that office to the head office of that Reserve Bank. 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 amendments to appendix A under the Fourth and Seventh Federal Reserve Districts (Federal Reserve Banks of Cleveland and Chicago) are effective on April 16, 2005. The amendments to appendix A under the Eleventh Federal Reserve District (Federal Reserve Bank of Dallas) are effective on April 23, 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 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] The amendments set forth in this notice are part of 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 Detroit branch office of the Federal

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

[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.*

Reserve Bank of Chicago will cease processing checks on April 16, 2005, and banks with routing symbols currently assigned to that office for check processing purposes will be reassigned to the Federal Reserve Bank of Cleveland's head office. The Houston branch office of the Federal Reserve Bank of Dallas will cease processing checks on April 23, 2005, and banks with routing symbols currently assigned to that office for check processing purposes will be reassigned to the Federal Reserve Bank of Dallas's head office. As a result of these changes, some checks that are drawn on and deposited at banks located in the affected check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules. Because the Cleveland check processing region will serve banks located in more than one Federal Reserve District, banks located in the expanded Cleveland check processing region cannot determine that a check is nonlocal solely because the paying bank for that check is located in another Federal Reserve district.

To assist banks in identifying local and nonlocal banks, the Board accordingly is amending the lists of routing symbols associated with the Federal Reserve Banks of Cleveland, Chicago, and Dallas to conform to the transfer of operations (1) from the Chicago Reserve Bank's Detroit branch office to the Cleveland Reserve Bank's head office and (2) from the Dallas Reserve Bank's Houston branch office to that Reserve Bank's head office. To coincide with the effective date of the underlying check processing changes, the amendments affecting the Federal Reserve Banks of Cleveland and Chicago are effective April 16, 2005, and the amendments affecting the Federal Reserve Bank of Dallas are effective April 23, 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.

[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.

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. These technical amendments to appendix A of Regulation CC will (1) delete the reference to the Detroit branch office of the Federal Reserve Bank of Chicago and reassign the routing symbols listed under that office to the head office of the Federal Reserve Bank of Cleveland and (2) delete the reference to the Houston branch office of the Federal Reserve Bank of Dallas and reassign the routing symbols listed under that office to the Dallas Reserve Bank's head office. 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.

12 CFR Chapter II

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

n 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)

n 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.

n 2. The Fourth, Seventh, and Eleventh Federal Reserve District routing symbol lists in appendix A are revised to read as follows:

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

* * * * *

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

0410	2410
0412	2412
0430	2430
0432	2432
0433	2433
0434	2434
0720	2720
0724	2724

Cincinnati Branch

0420	2420
0421	2421
0422	2422
0423	2423
0515	2515
0519	2519
0740	2740
0749	2749
0813	2813
0830	2830
0839	2839
0863	2863

Columbus Office

0440	2440
0441	2441
0442	2442

* * * * *

Seventh Federal Reserve District

[Federal Reserve Bank of Chicago]

Head Office

0710	2710
0711	2711
0712	2712
0719	2719
0750	2750
0759	2759

Des Moines Office

0730	2730
0739	2739
1040	3040
1041	3041
1049	3049

* * * * *

Eleventh Federal Reserve District

[Federal Reserve Bank of Dallas]

Head Office

1110	3110
1111	3111
1113	3113
1119	3119
1120	3120
1122	3122

1123	3123
1130	3130
1131	3131
1140	3140
1149	3149
1163	3163

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, February 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–3419 Filed 2–22–05; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 752, and 764

[Docket No. 050208029–5029–01]

RIN 0694–AD43

Denied Persons and Specially Designated Nationals

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule removes all reference in the Export Administration Regulations (EAR) to the supplement containing the list of persons denied export privileges (''Denied Persons List'' (DPL)) because no such supplement exists in the Code of Federal Regulations. In the past, such a supplement has been included only in the unofficial loose-leaf version of the EAR that is available by subscription from the U.S. Government Printing Office. In addition, the Bureau of Industry and Security provides notice to the public that it is discontinuing its practice of including in the loose-leaf version of the EAR both the DPL and the ''Specially Designated Nationals and Blocked Persons'' (SDN) List. Revisions to the DPL and SDN List are issued on such a frequent basis as to make the quarterly, hard-copy versions of the lists included in the loose-leaf version of the EAR inaccurate. The removal of the DPL and SDN List from the loose-leaf version of the EAR will minimize any potential that parties might rely on an outdated list of persons denied export privileges under the EAR.

DATES: *Effective Date:* This rule is effective February 23, 2005.

ADDRESSES: Although there is no official comment period, you may submit comments, identified by RIN 0694-AD43, by any of the following methods:

- E-mail: *mcohen@bis.doc.gov*. Include ''RIN 0694–AD43'' in the subject line of the message.
- Fax: 202–482–3355.
- Mail or Hand Delivery/Courier: U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: 0694–AD43.

Send a copy of any comments that concern information collection requirements to Dave Rostker, OMB Desk Officer, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6092, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Marcus Cohen, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: In the unofficial loose-leaf version of the Export Administration Regulations (EAR) that is available by subscription from the U.S. Government Printing Office, the Bureau of Industry and Security (BIS) currently publishes, on a quarterly basis, the list of persons denied export privileges pursuant to Parts 764 and 766 of the EAR (''Denied Persons List'' (DPL)) and a copy of the ''Specially Designated Nationals and Blocked Persons'' (SDN) List, which is published by the U.S. Treasury Department, Office of Foreign Assets Control (OFAC). In the loose-leaf edition of the EAR, the DPL and the SDN List have been designated as Supplements No. 2 and 3, respectively, to Part 764. However, no such supplements exist in the Code of Federal Regulations, Title 15 Part 764.

Orders affecting export privileges under the EAR and revisions to the SDN List are issued on such a frequent basis as to make the quarterly, hard-copy versions of the DPL and the SDN List inaccurate. As such, BIS is discontinuing quarterly reprints of these lists in the loose-leaf edition of the EAR. The removal of these lists from the loose-leaf edition of the EAR will minimize any potential that parties to a transaction might rely on an outdated list of persons denied export privileges under the EAR. BIS maintains a current compilation of persons denied export privileges under the EAR on its Web site, and OFAC maintains a current list of specially designated nationals on its Web site. Export privileges are denied by written order of the Department of Commerce; such orders are published in the **Federal Register**. These orders are the official source of information about denied persons, and are controlling documents in accordance with their terms.

This rule removes from § 736.2(b)(4)(i) and paragraph (a)(1) of Supplement No. 1 to Part 764 language stating that BIS provides the DPL in the loose-leaf edition of the EAR. This rule also revises § 736.2(a)(3) to clarify that, with respect to the end-user, General Prohibition Four (§ 736.2(b)(4)) and Supplement No. 1 to Part 764 of the EAR should be consulted for references to persons with whom transactions may not be permitted, and General Prohibition Five (§ 736.2(b)(5)) should be consulted for references to end-users for whom an export or reexport license may be required. General Prohibition Four prohibits actions that are prohibited by a denial order issued under Part 766 of the EAR. General Prohibition Five prohibits any exports and reexports to an end-user prohibited by Part 744 of the EAR, which contains end-user and end-use based controls. Supplement No. 1 to Part 764 describes denial orders, which prohibit certain transactions with named parties involving items that are subject to the EAR. Supplement No. 1 to Part 764 also references the list of persons denied export privileges.

This rule also makes necessary conforming changes by removing references to Supplement No. 2 to Part 764 from §§ 752.11(c)(3), 752.11(c)(4), and 752.12(a). Finally, this rule revises §§ 752.9(a)(3)(ii)(G) and 752.12(a) by removing the procedural requirement of distributing and retaining copies of the DPL. Instead, each Special Comprehensive License (SCL) holder and each consignee must maintain a record of its procedures for screening transactions to prevent violations of orders denying export privileges. By making this requirement functional and results-oriented, this revision will increase the effectiveness of screening and reduce the burden on SCL holders and consignees.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 6, 2004, (69 FR 48763 (August 10, 2004)) continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the PRA. This collection has been approved by OMB under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Dave Rostker, OMB Desk Officer, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6092, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring a notice of proposed rulemaking and the opportunity for public comment. This rule makes changes to Parts 736, 752, and 764 of the EAR that are non-substantive and do not affect the rights or obligations of the public. This rule removes references in the EAR to the DPL and notifies the public that it BIS is discontinuing its practice of including the DPL and SDN List in the loose-leaf version of the EAR. Because these revisions are not substantive changes to the EAR, it is unnecessary to provide notice and opportunity for public comment. In addition, because this is not a substantive rule, the delay in effective date pursuant to 5 U.S.C. 553(d)(3) is not applicable. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 736

Exports, Foreign trade.

15 CFR Part 752

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

n Accordingly, parts 736, 752, and 764 of the Export Administration Regulations (15 CFR parts 730–799) are amended, as follows:

PART 736—[AMENDED]

n 1. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 (note), Pub. L. 108–175; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004); Notice of November 4, 2004, 69 FR 64637 (November 8, 2004).

n 2. Section 736.2 is amended by revising paragraphs (a)(3) and (b)(4)(i), as follows:

§ 736.2 General prohibitions and determination of applicability.

(a) * * *

(3) *End-user.* The ultimate end user (see General Prohibition Four (paragraph (b)(4) of this section) and Supplement No. 1 to part 764 of the EAR for references to persons with whom your transaction may not be permitted; see General Prohibition Five (Paragraph (b)(5) of this section) and part 744 for references to end-users for whom you may need an export or reexport license).

* * * * *

(b) * * *

(4) * * *

(i) You may not take any action that is prohibited by a denial order issued under part 766 of the EAR, Administrative Enforcement Proceedings. These orders prohibit many actions in addition to direct exports by the person denied export privileges, including some transfers within a single country, either in the United States or abroad, by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do not violate the terms of the order. Orders denying export privileges are published in the **Federal Register** when they are issued and are the legally controlling documents in accordance with their terms. BIS also maintains compilations of persons denied export privileges on its Web site at *http://www.bis.doc.gov*. BIS may, on an exceptional basis, authorize activity otherwise prohibited by a denial order. See § 764.3(a)(2) of the EAR.

* * * * *

PART 752—[AMENDED]

n 3. The authority citation for 15 CFR part 752 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

n 4. Section 752.9 is amended by revising paragraph (a)(3)(ii)(G), as follows:

§ 752.9 Action on SCL applications.

(a) * * *

(3) * * *

(ii) * * *

(G) A copy of your procedures for screening transactions to prevent violations of orders denying export privileges under the EAR:

* * * * *

n 5. Section 752.11 is amended by revising paragraph (c)(3) and (c)(4), as follows:

§ 752.11 Internal Control Programs.

* * * * *

(c) * * *

(3) A system for timely distribution to consignees and verification of receipt by consignees of regulatory materials necessary to ensure compliance with the EAR;

(4) A system for screening transactions to prevent violations of orders denying export privileges under the EAR;

* * * * *

n 6. Section 752.12 is amended by revising paragraph (a), as follows:

§ 752.12 Recordkeeping requirements.

(a) *SCL holder and consignees.* In addition to the recordkeeping requirements of part 762 of the EAR, the SCL holder and each consignee must maintain copies of manuals, guidelines, policy statements, internal audit procedures, reports, and other

documents making up the ICP of each party included under an SCL and all regulatory materials necessary to ensure compliance with the SCL, such as relevant changes to the EAR, product classification, additions, deletions, or other administrative changes to the SCL, transmittal letters and consignee's confirmations of receipt of these materials. Each SCL holder and each consignee must maintain a record of its procedures for screening transactions to prevent violations of orders denying export privileges.

* * * * *

PART 764—[AMENDED]

n 7. The authority citation for 15 CFR part 764 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

n 8. Supplement No. 1 to Part 764 is amended by revising the sixth sentence of paragraph (a)(1), as follows:

Supplement No. 1 to Part 764—Standard Terms of Orders of Denying Export Privileges

(a) * * *

(1) * * * BIS provides a list of persons currently subject to denial orders on its Web site at *http://www.bis.doc.gov*.

* * * * *

Dated: February 14, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–3465 Filed 2–22–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 5, 16, 156, 157, and 385

[Docket No. RM04–9–000; Order No. 653]

Electronic Notification of Commission Issuances

February 10, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to provide for electronic notification of Commission issuances to service list recipients. In most instances, the Commission will now send such notices by e-mail. This change will increase the speed with which participants receive notice, reduce the Commission's costs, and provide for more accurate service lists. Allowance will be made for participants who are unable to utilize e-mail. Other revisions to the Commission's regulations will allow it to send electronic notifications to mailing list recipients once a system for doing so becomes operational. This final rule also makes revisions that are intended to increase the utilization of electronic forms of service between participants, and to clarify the Commission's regulations to ensure that documents with certification or verification requirements may be filed electronically.

DATES: *Effective Date:* The rule will become effective on March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8953.

SUPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. On June 23, 2004, the Commission issued a Notice of Proposed Rulemaking (NOPR) requesting comments on proposed revisions to its regulations regarding service of documents. Electronic Notification of Commission Issuances, 107 FERC ¶ 61,311, FERC Stats. & Regs. ¶ 32,574 (2004). The Commission, in the NOPR, proposed to begin serving notice of Commission issuances to persons on service and mailing lists via e-mail rather than postal mail, with exemptions for persons unable to receive notice electronically. The NOPR also proposed to make service by electronic means the standard form of service in Commission proceedings, and to clarify the Commission's regulations to ensure that documents with signature certification or verification requirements could be filed electronically.

I. Background

2. The NOPR's proposal, which this Final Rule adopts, was to initiate in early 2005 an eService program that will require each person on a service list to provide an e-mail address, registered through the Commission's eRegistration system, at which that person can receive notification of Commission issuances. The Commission views this program as an important element in its efforts to reduce the use of paper in compliance with the Government Paperwork Elimination Act.[1] This revision is intended to provide faster notification to participants in Commission proceedings while also reducing the Commission's mailing costs.

3. This Final Rule implements the eService system by amending Rule 2010[2] to require persons eligible to receive service to eRegister pursuant to 18 CFR 390.1 (2004). This requirement applies only to proceedings initiated on or after March 21, 2005. A person submitting an initial filing on behalf of one or more participants will designate the official contact for those participants on the service list. That person will, however, be able to designate additional contacts who will also be included on the service list if they are eRegistered. Persons for whom electronic notification is impractical may apply for a waiver and register by a paper form, as provided in 18 CFR 390.3 (2004). Such persons will receive postal mail notification.

4. As a backup in the early stages of the eService system, the Secretary will continue to send copies of Commission issuances by postal mail. This will continue for three months from the time this Final Rule becomes effective, after which notification will be solely by e-mail to contacts who are fully eRegistered, unless a waiver or exemption applies.

5. In addition to service by the Commission, this final rule adopts the NOPR's proposal to make electronic service the standard form of service under Rule 2010(f).[3] The Commission is amending its service rule to provide that, with the exception of those who are unable to receive such service, senders and recipients will serve documents upon one another by electronic means unless they agree otherwise.

6. The Commission will not at this time be implementing the system, proposed in the NOPR, of electronic notification for persons on the Commission's various mailing lists. It will, however, do so in the future. As explained in the NOPR, the Commission maintains a variety of mailing lists that it utilizes to inform potentially affected persons of certain developments in proceedings related to hydroelectric projects and natural gas facilities. Recipients include state and federal agencies, elected officials, Indian tribes, landowners, and other potentially interested persons and entities. The Commission intends to institute a system whereby mailing list recipients

[1] 44 U.S.C. 3504.

[2] 18 CFR 385.2010 (2004).

[3] 18 CFR 385.2010(f) (2004).

are given the ability to sign up to receive e-mail notifications of matters in which they might have an interest. There will be an option for receipt of postal notification for persons for whom electronic notification is impractical. The Commission will provide further information to the public once the manner in which this system will operate has been established.

7. The Commission is adopting in this Final Rule the regulatory revisions that the NOPR proposed to facilitate electronic notification to mailing list recipients. These revisions do not place any requirements on such recipients and thus can be adopted now, without need for a further rulemaking once the Commission has determined the precise manner in which electronic notification will work. The Commission is revising the following sections of 18 CFR:

- § 5.4(b)(1)(iii)—Request for acceleration of license expiration date.
- § 5.8(e)(3)—Commencement of proceeding and scoping document, or approval to use traditional licensing process or alternative procedures.
- § 5.19(c)(2)—Tendering notice and schedule.
- § 16.6(d)(1)(iii)—Notification under Section 15 of the Federal Power Act.
- §§ 16.9(d)(1)(iii), (d)(2)(ii)—License applications under Sections 14 and 15 of the Federal Power Act.
- § 156.8—Applications for orders under Section 7(a) of the Natural Gas Act.
- § 157.9—Applications for certificates of public convenience and necessity and for orders approving abandonment under Section 7 of the Natural Gas Act.

8. Finally, the Commission is adopting the NOPR's proposal to revise Rule 2003(c)[4] to provide specifically that any requirement for certification, notarization, verification, or any similar means by which a witness represents that his statement is true, may be satisfied through the provisions of 28 U.S.C. 1746. Consequently, a declaration under penalty of perjury will suffice for verification purposes. Under Rule 2005(c),[5] the typed characters of the signer's name are sufficient to show that that person signed an eFiled document. These two provisions, taken together, will remove potential barriers to the electronic filing of documents requiring signature and verification. The Commission is requiring, however, that a document with an original signature be maintained by the submitter until the relevant proceeding has been concluded.

[4] 18 CFR 385.2003(c) (2004).

[5] 18 CFR 385.2005(c) (2004).

II. Comments and Discussion

9. The Commission received eleven comments on the NOPR.[6] The commenters were uniformly positive about the proposal in general and offered a number of suggestions for features that they believe will improve the utility and efficiency of the system. As explained below, the Commission in some cases has incorporated these suggestions in the system that will become operational by March 21, 2005. In other cases, the Commission intends to add the suggested features, or similar ones, in the future. The eService system that will be released when this rulemaking becomes effective will not be the final iteration, as the Commission will endeavor on an ongoing basis to improve all of its information systems in ways that will add value to the public. The Commission will make public announcements as further enhancements become available. The comments that the Commission received, as well as other forms of input from users of its online systems, will continue to play an important role in its efforts to provide information quickly and efficiently to industry and the public.

10. Some commenters also requested clarification or further explanation of the system's operation. These comments also are addressed below.

A. Basic Requirements of eService

11. Several commenters[7] suggest that the system be designed to serve filings automatically upon persons included in the service list. The Commission agrees that this feature would add considerable value to the system by making it unnecessary in most cases for the filer to serve documents. It will not be possible to include this feature in the system by the effective date of this rulemaking, but the Commission may add it via a subsequent rulemaking.

12. One of the more difficult issues presented by the conversion to electronic service, and one addressed by many commenters,[8] is the question whether e-mail notifications should link to a document in the Commission's eLibrary database or, instead, contain the served document as an attachment. Each solution presents a potential difficulty: filed documents are not always available immediately in eLibrary, and attachments may become voluminous and overburden a recipient's e-mail system, particularly in a proceeding in which numerous filings may be due on a specific date.

13. The Commission is revising Rule 2010 to provide that the person responsible for making service may do so by sending a link to the document in the Commission's eLibrary system or by alternate means that are reasonably calculated to make the document available to the recipients. Service of a link to eLibrary will be easy to accomplish. When a document is filed electronically, the person making the filing will receive a confirmation e-mail. The e-mail contains a link to the document. Even though the document will not yet be in eLibrary, the same link will take a viewer to the document once it is in eLibrary. Therefore, the person making the filing may simply forward the confirmation e-mail to the recipients on the service list. In rare instances, there may be some delay before a document becomes available in eLibrary. The revisions therefore provide that, where a document does not become available within two business days, the sender must provide service immediately by alternate means.

14. The revised Rule 2010 leaves open the possibility that participants may wish to employ means of service other than links to eLibrary. In many cases, participants may wish to use means such as service of documents as attachments or service of links to web sites operated by the filing participant. Although the rule will not require participants to agree on alternate means of service, the Commission anticipates that in most proceedings, participants will voluntarily settle upon some mutually acceptable means. Alternate means of service are being employed now in many proceedings before the Commission. In some larger proceedings, Commission staff currently is establishing listservs on which parties may post filings, making them quickly and conveniently available to all parties in a proceeding. Available technology offers numerous means of exchanging documents quickly and efficiently. The Commission is loath to constrain the ability of participants in its proceedings to take advantage of such technology and is confident that participants will cooperate with one another in doing so to the greatest possible degree.

[6] Comments are listed in Appendix A.

[7] Edison Electric Institute (EEI), p. 7; Spiegel & McDiarmid, p. 7; Sullivan & Worcester, LLP. (Sullivan & Worcester), pp. 3–4.

[8] FPL Group, Inc. (FPL Group), pp. 2–3; Interstate Natural Gas Association of America, pp. 1–2; Miller, Balis & O'Neil, P.C. (Miller, Balis), p. 2; Missouri Public Service Commission (MPSC), pp. 3–4; NiSource, Inc., pp. 3–4; Spiegel & McDiarmid, pp. 6, 8–9; Sullivan & Worcester, pp. 2–3; Williston Basin Interstate Pipeline Company (Williston Basin), pp. 3–5.

15. Several commenters [9] suggest the use of standardized language in the subject line of e-mails for service both by the Commission and by participants. Such a requirement would make it easier for participants to set e-mail filters to avoid blocking messages relating to Commission proceedings. The Commission agrees that such a requirement is desirable and will include directions for standardized subject lines at a prominent location in the system. Participants will be directed to include the phrase ''Document Service'' in the subject line of service e-mails.

16. One commenter [10] asked that, if it could do so with little or no delay, the Commission make this rule effective with the start of a new docket year, which would be October 1. The timing has, however, worked out in such a way as to make it impractical. The eService system could not have been functional by October 1, 2004, and the Commission does not wish to delay the benefits of the system until late 2005.

17. One commenter [11] requested that the ''default'' for service among participants be changed to allow participants to employ electronic service even without advance agreement among the participants. The Commission also received the suggestion [12] that the service rule be clarified to state that, where one participant is unable to receive electronic service, the remaining participants may still serve each other via electronic service. The Commission agrees with both comments. It is revising Rule 2010(f) to provide that service shall be by electronic means unless the participants otherwise agree, except where a participant is unable to receive electronic service. This provision will not be limited to proceedings commenced after the effective date of this Final Rule. In addition, the revised rule will make clear that electronic service is still to be employed among participants who are able to use it. This is what the Commission originally intended.

18. One commenter [13] asked how service of protected documents will be handled. Currently, the Commission's regulations on service do not require that protected documents be served electronically, nor do they prohibit it. The owner of the document retains the ability to decide whether to transmit it electronically to other participants in a proceeding. Obviously, in this situation serving a link to eLibrary will not work, so participants will have to make other arrangements. This Final Rule makes no change on this issue. Participants are best left to assess for themselves the risks and benefits of different methods of transmitting protected information, as the most desirable method undoubtedly will vary from case to case.

B. Miscellaneous Features.

19. One commenter [14] states that it has experienced problems with group interventions in the Commission's electronic filing system. The commenter reports that placing more than two representatives on the service list when filing electronically has been difficult and that the system does not always pick up the correct designations of principals and counsel when members of a group intervene jointly. This comment is outside the scope of the NOPR, but the Commission expects the new interface for its eFiling system to resolve this problem.

20. A commenter [15] suggests that the Commission's eSubscription system allow subscription by applicant name. This comment also is outside the scope of the NOPR, but a later revision to the eSubscription system will allow applicant-name-based subscription.

21. The U.S. Postal Service suggests that the Commission utilize its Electronic Postmark (EPM) system to provide security for its eService system. The EPM system requires payment of a fee, however, and the Commission believes that it can achieve sufficient levels of security without EPM.

22. Some commenters [16] suggest that the Commission allow users to employ a second e-mail address, that is, an e-mail address other than the one they use for eRegistration, for eService. Some also suggest the allowance of group e-mail addresses for service purposes. They state that such capability will make it easier for them to route service e-mails within their organizations. The Commission does not consider this approach practical. Part of the Commission's purpose in initiating the eRegistration system was to obtain cleaner service and mailing lists by reducing duplicative and conflicting entries. Creating a system of e-mail addresses that would be separate from the eRegistration would defeat this purpose. In addition, standardizing the subject line of service e-mails—possibly by requiring inclusion of docket numbers—should make it possible for companies and law firms to establish their own internal forwarding rules, which would achieve the same purpose addressed by the comments.

23. One commenter [17] suggested that the Commission employ a format that would allow a downloaded service list to be inserted into e-mail programs. The Commission intends to add a feature of this type in the future. For this release, the eService system will only provide a file download of all the e-mail addresses on a service list. In a later release, however, it should be possible for the user to open a new message in the user's e-mail application so that the ''To'' field will automatically be populated with all the e-mail addresses on the relevant service list.

24. A commenter [18] suggested that the system provide a drop list of users who are already registered, which the commenter believed might be useful for various purposes. It would not be possible to implement such a functionality in this release of the system. The Commission may revisit this point, however, in designing future releases. One concern is privacy. Obviously, e-mail addresses contained on service lists must be exposed to the view of participants who are eFiling, but the use of a drop list might arguably be an inappropriate level of exposure. The Commission intends to examine the appropriate balance of privacy and ease of use.

25. One commenter [19] suggested that the Commission design the system to alert other participants if a participant receives a waiver of the eRegistration requirement. Such a function should not be necessary, because the identity of persons receiving waivers will be apparent from the service list, which will show their mailing addresses but no e-mail addresses. Similarly, it would be impractical at this time to implement a function that would provide participants with notice that people they added to the service list were receiving service. Generally speaking, failure to receive service would become apparent in the same manner as with postal mail. A person who adds others to the service list would simply need to verify that the others received service of the first document after they were added.

26. One commenter [20] requested that the Commission clarify what would happen if the Commission serves an

[9] Miller, Balis, p. 3; MPSC, p. 3; Spiegel & McDiarmid, p. 2; Sullivan & Worcester, pp. 4–5.

[10] Miller, Balis, p. 4.

[11] EEI, p. 6.

[12] EEI, pp. 5–6; Spiegel & McDiarmid, pp. 7–8.

[13] Spiegel & McDiarmid, p. 2.

[14] Miller, Balis, p. 3.

[15] Miller, Balis, p. 4.

[16] FPL Group, p. 2; Spiegel & McDiarmid, pp. 3–4.

[17] Miller, Balis, p. 4.

[18] Spiegel & McDiarmid, pp. 4–5.

[19] EEI, p 5.

[20] Spiegel & McDiarmid, p. 5.

issuance on a person after that person has been prompted by the system to eRegister but before the person has had a chance to do so. This scenario will not arise because the system, as designed, will require that all contacts listed by a filer be eRegistered. The system will not send out notifications to persons (who are not eRegistered) inviting them to eRegister. The signer or counsel of record would be responsible for serving other contacts who are not eRegistered.

27. One commenter [21] requested an explanation of the statement in the NOPR that the person submitting the initial filing on behalf of a participant would by default become the representative contact on the service list. The commenter asked whether a paralegal filing for an attorney would need to log in as the attorney to ensure that the attorney was the representative. Another commenter [22] suggested that the signer of the document be the ''default'' contact. The new system will address this issue. Until now, the field for the ''signer'' of a document defaulted to the login ID—*i.e.*, the paralegal—so that if the paralegal did not enter the attorney's e-mail address, the paralegal would become the contact. In the new system, there will be no default, so the paralegal will be required to enter an e-mail address, which will be the attorney's e-mail address.

28. One commenter [23] asked for clarification of whether programs used by some organizations to download and clean up service lists will still function despite the security measures that the Commission will have to implement to ensure that e-mail addresses remain available only to persons who are eRegistered. Currently, third party programs of this nature access contact information such as street addresses, but not e-mail addresses. The initial release of the eService system will continue to allow access by third party software to contacts' information such as street addresses, but will not allow access to their e-mail addresses.

29. One commenter [24] suggested that the Commission include an ID number on mailings in hydroelectric and natural gas proceedings—*i.e.*, to mailing lists as opposed to service lists—to eliminate the need for a private link or a complicated URL to allow the recipient to access Non-Internet Public (NIP) documents. The Commission cannot, consistent with its security requirements, provide IDs to eLibrary to allow access to non-public documents.

30. One commenter [25] preferred that the Commission not adopt the requirement, proposed in the NOPR, that a participant retain physically signed copies of electronically served, signature-required documents. The commenter stated that it is attempting to go entirely ''paperless.'' The Commission does not wish to impede the commenter's efforts, but believes this requirement will have very limited impact. The requirement is needed to ensure that a signature's validity will not be subject to challenge in later administrative or judicial proceedings.

31. One commenter [26] suggested that the Commission maintain service lists in hydroelectric proceedings for the separate proceedings and not for entire dockets. This comment is outside the scope of the NOPR. The Commission will, however, investigate the possibility of making such a change at a later time.

32. One commenter [27] stated that the Commission should recognize facsimile transmissions, commonly called ''fax'' transmissions, as electronic transmissions within this rulemaking. The Commission does not consider facsimile transmissions to be electronic transmissions in the same manner as, for instance, e-mails. Although a facsimile transmission is an electronic means of sending a document, it produces only a paper document. Thus, it does not adequately further the Commission's, and Congress', goal of reducing the use of paper. The Commission therefore does not regard it as an alternative form of electronic transmission for purposes of this Final Rule.

Information Collection Statement

33. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[28] This Final Rule does not contain any information collection requirements and compliance with the OMB regulations is thus not required.

Environmental Analysis

34. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[29] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[30] This Final Rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

35. The Regulatory Flexibility Act of 1980 [31] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this Final Rule will not have such an impact on small entities.

Document Availability

36. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

37. From FERC's home page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

38. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov),* or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

Effective Date

39. These regulations are effective on March 21, 2005.

40. The provisions of 5 U.S.C. 801 regarding Congressional review of Final

[21] Spiegel & McDiarmid, pp. 5–6.

[22] Sullivan & Worcester, p. 5.

[23] Spiegel & McDiarmid, p. 6.

[24] Spiegel & McDiarmid, p. 9.

[25] Williston Basin, p. 6.

[26] Spiegel & McDiarmid, pp. 9–10.

[27] Adirondack Mountain Club.

[28] 5 CFR 1320.12.

[29] Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990, ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR part 380).

[30] 18 CFR 380.4(a)(2)(ii).

[31] 5 U.S.C. 601–612.

Rules does not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects

18 CFR Part 5

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 16

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 156

Administrative practice and procedure, Natural Gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Linda Mitry,

Deputy Secretary.

n In consideration of the foregoing, the Commission amends parts 5, 16, 156, 157, and 385, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 5—INTEGRATED LICENSE APPLICATION PROCESS

n 1. The authority citation for part 5 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

n 2. Amend § 5.4 by revising paragraph (b)(1)(iii) to read as follows:

§ 5.4 Acceleration of a license expiration date.

* * * * *

(b) * * *

(1) * * *

(iii) Notifying appropriate Federal, state, and interstate resource agencies and Indian tribes, and non-governmental organizations likely to be interested, by electronic means if practical, otherwise by mail.

* * * * *

n 3. Amend § 5.8 by revising paragraph (e)(3) to read as follows:

§ 5.8 Notice of commencement of proceeding and scoping document, or of approval to use traditional licensing process or alternative procedures.

* * * * *

(e) * * *

(3) Notifying appropriate Federal, state, and interstate resource agencies, state water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

n 4. Amend § 5.19 by revising paragraph (c)(2) to read as follows:

§ 5.19 Tendering notice and schedule.

* * * * *

(c) * * *

(2) Notifying appropriate Federal, state, and interstate resource agencies, state water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

* * * * *

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

n 5. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

n 6. Amend § 16.6 by revising paragraph (d)(1)(iii) to read as follows:

§ 16.6 Notification procedures under section 15 of the Federal Power Act.

* * * * *

(d) * * *

(1) * * *

(iii) Notifying the appropriate Federal and state resource agencies, state water quality and coastal zone management consistency certifying agencies, and Indian tribes, by electronic means if practical, otherwise by mail.

* * * * *

n 7. Amend § 16.9 by revising paragraphs (d)(1)(iii) and (d)(2)(ii) to read as follows:

§ 16.9 Applications for new licenses and nonpower licenses for projects subject to sections 14 and 15 of the Federal Power Act.

* * * * *

(d) * * *

(1) * * *

(iii) Notifying appropriate Federal, state, and interstate resource agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

(2) * * *

(ii) Provide the notice to appropriate Federal, state, and interstate resource agencies and Indian tribes, by electronic means if practical, otherwise by mail; and

* * * * *

PART 156—APPLICATIONS FOR ORDERS UNDER SECTION 7(a) OF THE NATURAL GAS ACT

n 8. The authority citation for part 156 continues to read as follows:

Authority: 52 Stat. 824, 829, 830; 56 Stat. 83, 84; 15 U.S.C. 717f, 717f(a), 717n, 717o.

n 9. Revise § 156.8 to read as follows:

§ 156.8 Notice of application.

Notice of each application filed, except when rejected in accordance with § 156.6, will be published in the **Federal Register** and copies of such notice sent to the State affected thereby via electronic means if practical, otherwise by mail.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

n 10. The authority citation for part 156 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

n 11. Revise § 157.9 to read as follows:

§ 157.9 Notice of application.

Notice of each application filed, except when rejected in accordance with § 157.8, will be issued within 10 days of filing, and subsequently will be published in the **Federal Register** and copies of such notice sent to States affected thereby, by electronic means if practical, otherwise by mail. Persons desiring to receive a copy of the notice of every application shall so advise the Secretary.

PART 385—RULES OF PRACTICE AND PROCEDURE

n 12. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

n 13. Amend § 385.2005 by adding paragraph (b)(3) and revising paragraph (c) to read as follows:

§ 385.2005 Subscription and verification (Rule 2005).

* * * * *

(b) * * *

(3) Any requirement that a filing include or be supported by a sworn declaration, verification, certificate, statement, oath, or affidavit may be satisfied by compliance with the provisions of 28 U.S.C. 1746, provided that the filer, or an authorized representative of the filer, maintains a copy of the document bearing an original, physical signature until after such time as all administrative and judicial proceedings in the relevant matter are closed and all deadlines for further administrative or judicial review have passed.

(c) *Electronic signature.* In the case of any document filed in electronic form under the provisions of this Chapter, the typed characters representing the name of a person shall be sufficient to show that such person has signed the document for purposes of this section.

n 14. Amend § 385.2010 by revising paragraphs (a) through (g), redesignating paragraphs (h) and (i) as (j) and (k), and adding new paragraphs (h) and (i), and to read as follows:

§ 385.2010 Service (Rule 2010).

(a) *By participants.* (1) Any participant filing a document in a proceeding must serve a copy of the document on:

(i) Each person whose name is on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding; and

(ii) Any other person required to be served under Commission rule or order or under law.

(2) If any person receives a rejection letter or deficiency letter from the Commission, the person must serve a copy of the letter on any person previously served copies of the rejected or deficient filing.

(b) *By the Secretary.* The Secretary will serve, as appropriate:

(1) A copy of any complaint on any person against whom the complaint is directed;

(2) A copy of any notice of tariff or rate examination or order to show cause, on any person to whom the notice or order is issued;

(3) A copy of any rule or any order by a decisional authority in a proceeding on any person included on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding, provided that such person has complied with paragraph (g) of this section.

(c) *Official service list.* (1) The official service list for any proceeding will contain:

(i) The name, address and, for proceedings commenced on or after March 21, 2005, e-mail address of any person designated for service in the initial pleading, other than a protest, or in the tariff or rate filing which is filed by any participant; and

(ii) The name of counsel for the staff of the Commission.

(2) Any designation of a person for service may be changed by following the instructions for the Commission's electronic registration system, located on its Web site at *http://www.ferc.gov* or, in the event that the proceeding was commenced prior to March 21, 2005, or the person designated for service is unable to use the electronic registration system, by filing a written notice with the Commission and serving the notice on each person whose name is included on the official service list.

(d) *Restricted service list.* (1) For purposes of eliminating unnecessary expense or improving administrative efficiency, the Secretary, an office director, or the presiding officer may establish, by order, a restricted service list for an entire proceeding, a phase of a proceeding, one or more issues in a proceeding, or one or more cases in a consolidated proceeding.

(2) Any restricted service list will contain the names of each person on the official service list, or the person's representative, who, in the judgment of the decisional authority establishing the list, is an active participant with respect to the proceeding or consolidated proceeding, any phase of the proceeding, or any issue in the proceeding, for which the list is established.

(3) Any restricted service list is maintained in the same manner as, and in addition to, the official service list under paragraph (c) of this section.

(4) Before any restricted service list is established, each person included on the official service list will be given notice of any proposal to establish a restricted service list and an opportunity to show why that person should also be included on the restricted service list or why a restricted service list should not be established.

(5) Any designation of a person for service on a restricted service list may be changed by filing written notice with the Commission and serving that notice on each person whose name is on the applicable restricted service list.

(e) *Intervenors.* If a motion to intervene or any notice of intervention is filed, the name, address and, for proceedings commenced on or after March 21, 2005, e-mail address of any person designated for service in the motion or notice are placed on the official service list or any applicable restricted service list, provided that such person has complied with paragraph (g) of this section. Any person placed on the official service list under this paragraph is entitled to service in accordance with this section. If a motion to intervene is denied, the name, address and e-mail address of each person designated for service pursuant to that motion will be removed from the official service list.

(f) *Methods of service.* (1) Except as provided in paragraph (g) of this section, service of any document must be made by electronic means unless the sender and all recipients agree otherwise, except in the case of a recipient who has secured a waiver under the provisions of § 390.3 of this Chapter, or is exempt under the provisions of § 390.4 of this Chapter, in which case service upon that recipient only shall be made by:

(i) United States mail, first class or better; or

(ii) Delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt.

(2) Service of a document by electronic means shall be made by the transmission of a link to that document in the Commission's eLibrary system or by alternate means reasonably calculated to make the document available to required recipients. Alternate means may include but are not limited to, attachment of an electronic copy of the document to an e-mail or transmission of a link to an Internet site containing the document. It is the sender's responsibility to take reasonable steps to ensure that the means employed for service will be within the technological capabilities of the recipients.

(g) *Methods of Service by the Secretary.* Service by the Secretary shall be made by electronic means, unless such means are impractical, in which case service shall be made by United States mail.

(h) *Electronic registration.* In the case of proceedings commenced on or after March 21, 2005, any person, to be included on a service list, must have complied with the procedures for electronic registration made available on the Commission's Web site, at http://www.ferc.gov, unless such person has secured a waiver under the provisions of § 390.3 of this Chapter, or is exempt under the provisions of § 390.4 of this Chapter.

(i) *Timing of service.* (1) Service is made under this section when the document served is deposited in the mail or is delivered in another manner.

(2) Service of any document must be made not later than the date of the filing of the document.

(3) In the case of a document served through a link to the Commission's eLibrary system, as specified in paragraph (f)(2) of this section, if a link to the document does not become available in eLibrary within two business days after the document is filed, the person responsible for serving the document must immediately serve the document by other means, as specified in paragraph (f)(1) or (f)(2) of this section.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A

Adirondack Mountain Club
Edison Electric Institute
FPL Group, Inc.
Interstate Natural Gas Association of America
Miller, Balis & O'Neil, P.C.
Missouri Public Service Commission
NiSource, Inc.
Spiegel & McDiarmid
Sullivan & Worcester, LLP.
United States Postal Service
Williston Basin Interstate Pipeline Company

[FR Doc. 05–3476 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2002N–0277]

Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final regulation that appeared in the **Federal Register** of December 9, 2004 (69 FR 71562). The document issued a final regulation that requires the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States. Such records allow for the identification of the immediate previous sources and immediate subsequent recipients of food. The document was published with some errors. This document corrects those errors.

DATES: This rule is effective February 7, 2005.

FOR FURTHER INFORMATION CONTACT: Nega Beru, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1400.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–26929, appearing on page 71562 in the **Federal Register** of Thursday, December 9, 2004, the following corrections are made to the **SUPPLEMENTARY INFORMATION**:

1. On page 71562, in the first column, under **DATES** after ''Compliance Dates'' the phrase ''except that for small businesses employing fewer than 500, but more than 10 full-time equivalent employees, the compliance date is June 9, 2005;'' is corrected to read ''except that for small businesses employing fewer than 500, but more than 10 full-time equivalent employees, the compliance date is June 9, 2006;''.

2. On page 71564, in the second column, the sixth bullet, beginning in the 4th line, the phrase ''except that the compliance date for small businesses employing fewer that 500, but more than 10 full-time equivalent employees is June 9, 2005,'' is corrected to read ''except that the compliance date for small businesses employing fewer than 500, but more than 10 full-time equivalent employees is June 9, 2006,''.

3. On page 71565, in the second column, the last bullet, second sentence, the sentence ''Small businesses have June 9, 2005, of this final rule to come into compliance with these regulations, and very small businesses have December 11, 2006, of this final rule to come into compliance with these regulations.'' is corrected to read ''Small businesses have until June 9, 2006, to come into compliance with these regulations, and very small businesses have until December 11, 2006, to come into compliance with these regulations.''

4. On page 71609, in the third column, in the 1st complete paragraph, the sentences ''Section 1.368 of the final rule requires large businesses (500 or more full-time equivalent employees) to be in compliance within December 9, 2005. Small businesses (those with fewer than 500, but more than 10 full-time equivalent employees) must be in compliance within June 9, 2005, and very small businesses that employ 10 or fewer full-time equivalent employees must be in compliance within December 11, 2006.'' are corrected to read ''Section 1.368 of the final rule requires large businesses (500 or more full-time equivalent employees) to be in compliance by December 9, 2005. Small businesses (those with fewer than 500, but more than 10 full-time equivalent employees) must be in compliance by June 9, 2006, and very small businesses that employ 10 or fewer full-time equivalent employees must be in compliance by December 11, 2006.''

5. On page 71627, in the third column, beginning in the 12th line from the bottom, the sentence ''For example, from CA, LA, and TX alone, DOT reports over 12 percent of intrastate truck tonnage is from FDA-regulated products (ref. 18).'' is corrected to read ''For example, for California in 1997, DOT reports 12.8 percent of revenue from specialized freight transportation is for intrastate traffic in agricultural products (ref. 18).''

6. On page 71651, in the first column, in Reference 18, the phrase ''U.S. Department of Transportation, available at *http://www.transtats.bts.gov*, accessed on April 6, 2004.'' is corrected to read ''1997 Economic Census, Transportation and Warehousing, Geographic Area Series, California 1997, issued January 2000, U.S. Department of Commerce.''

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

n Therefore, 21 CFR part 1 is corrected by making the following correcting amendments:

PART 1—GENERAL ENFORCEMENT REGULATIONS

n 7. The authority citation for 21 CFR part 1 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

n 8. In § 1.363, revise paragraph (b) to read as follows:

§ 1.363 What are the consequences of failing to establish or maintain records or make them available to FDA as required by this subpart?

* * * * *

(b) The failure of a nontransporter immediate previous source or a nontransporter immediate subsequent recipient who enters an agreement under § 1.352(e) to establish, maintain, or establish and maintain, records required under § 1.352(a), (b), (c), or (d), or the refusal to permit access to or

verification or copying of any such required record, is a prohibited act under section 301 of the act.

* * * * *

n 9. In § 1.368, revise paragraph (a) to read as follows:

§ 1.368 What are the compliance dates for this subpart?

* * * * *

(a) The compliance date for the requirements in this subpart is June 9,2006, for small businesses employing fewer that 500, but more than 10 full-time equivalent employees.

* * * * *

Dated: February 16, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3424 Filed 2–22–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9180]

RIN 1545–BC29

Adjustment To Net Unrealized Built-in Gain

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1374 that provide for an adjustment to the amount that may be subject to tax under section 1374 in certain cases in which an S corporation acquires assets from a C corporation in an acquisition to which section 1374(d)(8) applies. These final regulations provide guidance to certain S corporations that acquire assets from a C corporation in a carryover basis transaction.

DATES: *Effective Date:* These regulations are effective February 23, 2005.

Applicability Dates: For dates of applicability, *see* § 1.1374–10.

FOR FURTHER INFORMATION CONTACT: Jennifer D. Sledge, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to Income Tax Regulations (26 CFR part 1) under section 1374 of the Internal Revenue Code (Code), relating to the tax imposed on certain recognized built-in gains of S corporations. Section 1374 imposes a tax on an S corporation's net recognized built-in gain attributable to assets that it held on the date it converted from a C corporation to an S corporation for the 10-year period beginning on the first day the corporation is an S corporation and assets that it acquired from a C corporation in a carryover basis transaction for the 10-year period beginning on the day of the acquisition. A separate determination of the amount subject to tax under section 1374 is required for those assets the S corporation held on the date it converted to C status and each pool of assets the S corporation acquired in a carryover basis transaction from a C corporation. The total amount subject to tax under section 1374 for each pool of assets is limited to that pool's net unrealized built-in gain (NUBIG) on the date of the conversion or acquisition.

Under the current rules, if X, a C corporation, elects to be an S corporation when it owns some or all of the stock of Y, a C corporation, and Y subsequently transfers its assets to X in a liquidation to which sections 332 and 337(a) apply or in a reorganization described in section 368(a), the built-in gain or built-in loss in Y's assets may be wholly or partially reflected twice: once in the NUBIG attributable to the assets X owned on the date of its conversion (including the Y stock) and a second time in the NUBIG attributable to Y's former assets acquired by X in the liquidation of Y. The IRS and Treasury Department recognize that continuing to reflect the built-in gain or the built-in loss in the Y stock at the time of X's conversion after the liquidation or reorganization is inconsistent with the fact that such liquidation or reorganization has the effect of eliminating that built-in gain or built-in loss. Therefore, on June 25, 2004, the IRS and Treasury Department published in the **Federal Register** (69 FR 35544) a notice of proposed rulemaking (REG–131486–03) that includes regulations proposing an adjustment to the NUBIG in these cases. In particular, the proposed regulations generally provide that, if an S corporation acquires assets of a C corporation in a carryover basis transaction, some or all of the stock of the C corporation from which such assets were acquired was taken into account in the computation of NUBIG for a pool of assets of the S corporation, and some or all of such stock is redeemed or canceled in such transaction, then, subject to certain limitations, such NUBIG is adjusted to eliminate any effect any built-in gain or built-in loss in the redeemed or canceled stock had on the initial computation of NUBIG for that pool of assets. These regulations are proposed to apply for taxable years beginning after the date they are published as final regulations in the **Federal Register**.

No public hearing was requested or held regarding the proposed regulations. One written comment, however, was received. That comment requested that the proposed regulations be made effective as soon as possible.

These final regulations adopt the proposed regulations without substantive change as final regulations. However, the final regulations do modify the proposed effective date of the regulations. The final regulations apply to section 1374(d)(8) transactions that occur in taxable years beginning after February 23, 2005. The final regulations also provide that an S corporation may apply the regulations to section 1374(d)(8) transactions that occur in taxable years beginning on or before February 23, 2005, if the S corporation (and any predecessors or successors) and all affected shareholders file original or amended returns that are consistent with the regulations for taxable years of the S corporation during the recognition period of the pool of assets the NUBIG of which would be adjusted pursuant to the regulations that are not closed as of the first date after February 23, 2005, that the S corporation files an original or amended return.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jennifer D. Sledge of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

n Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

n **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

n **Par. 2.** Section 1.1374–3 is amended by:

n 1. Revising paragraph (b).

n 2. Adding paragraph (c).

The revision and addition read as follows:

§ 1.1374–3 Net unrealized built-in gain.

* * * * *

(b) *Adjustment to net unrealized built-in gain*—(1) *In general.* If section 1374(d)(8) applies to an S corporation's acquisition of assets, some or all of the stock of the corporation from which such assets were acquired was taken into account in the computation of the net unrealized built-in gain for a pool of assets of the S corporation, and some or all of such stock is redeemed or canceled in such transaction, then, subject to the limitations of paragraph (b)(2) of this section, such net unrealized built-in gain is adjusted to eliminate any effect that any built-in gain or built-in loss in the redeemed or canceled stock (other than stock with respect to which a loss under section 165 is claimed) had on the initial computation of net unrealized built-in gain for that pool of assets. For purposes of this paragraph, stock described in section 1374(d)(6) shall be treated as taken into account in the computation of the net unrealized built-in gain for a pool of assets of the S corporation.

(2) *Limitations on adjustment*—(i) *Recognized built-in gain or loss.* Net unrealized built-in gain for a pool of assets of the S corporation is only adjusted under paragraph (b)(1) of this section to reflect built-in gain or built-in loss in the redeemed or canceled stock that has not resulted in recognized built-in gain or recognized built-in loss during the recognition period.

(ii) *Anti-duplication rule.* Paragraph (b)(1) of this section shall not be applied to duplicate an adjustment to the net unrealized built-in gain for a pool of assets made pursuant to paragraph (b)(1) of this section.

(3) *Effect of adjustment.* Any adjustment to the net unrealized built-in gain made pursuant to this paragraph (b) only affects computations of the amount subject to tax under section 1374 for taxable years that end on or after the date of the acquisition to which section 1374(d)(8) applies.

(4) *Pool of assets.* For purposes of this section, a pool of assets means—

(i) The assets held by the corporation on the first day it became an S corporation, if the corporation was previously a C corporation; or

(ii) The assets the S corporation acquired from a C corporation in a section 1374(d)(8) transaction.

(c) *Examples.* The following examples illustrate the rules of this section:

Example 1. Computation of net unrealized built-in gain. (i)(A) X, a calendar year C corporation using the cash method, elects to become an S corporation on January 1, 1996. On December 31, 1995, X has assets and liabilities as follows:

Assets	FMV	Basis
Factory	$500,000	$900,000
Accounts Receivable	300,000	0
Goodwill	250,000	0
Total	1,050,000	900,000
Liabilities		**Amount**
Mortgage		$200,000
Accounts Payable		100,000
Total		300,000

(B) Further, X must include a total of $60,000 in taxable income in 1996, 1997, and 1998 under section 481(a).

(ii) If, on December 31, 1995, X sold all its assets to a third party that assumed all its liabilities, X's amount realized would be $1,050,000 ($750,000 cash received + $300,000 liabilities assumed = $1,050,000). Thus, X's net unrealized built-in gain is determined as follows:

Amount realized	$1,050,000
Deduction allowed (A/P)	(100,000)
Basis of X's assets	(900,000)
Section 481 adjustments	60,000
Net unrealized built-in gain	110,000

Example 2. Adjustment to net unrealized built-in gain for built-in gain in eliminated C corporation stock. (i) X, a calendar year C corporation, elects to become an S corporation effective January 1, 2005. On that date, X's assets (the first pool of assets) have a net unrealized built-in gain of $15,000. Among the assets in the first pool of assets is all of the outstanding stock of Y, a C corporation, with a fair market value of $33,000 and an adjusted basis of $18,000. On March 1, 2009, X sells an asset that it owned on January 1, 2005, and as a result has $10,000 of recognized built-in gain. X has had no other recognized built-in gain or built-in loss. X's taxable income limitation for 2009 is $50,000. Effective June 1, 2009, X elects under section 1361 to treat Y as a qualified subchapter S subsidiary (QSub). The election is treated as a transfer of Y's assets to X in a liquidation to which sections 332 and 337(a) apply.

(ii) Under paragraph (b) of this section, the net unrealized built in-gain of the first pool of assets is adjusted to account for the elimination of the Y stock in the liquidation. The net unrealized built-in gain of the first pool of assets, therefore, is decreased by $15,000, the amount by which the fair market value of the Y stock exceeded its adjusted basis as of January 1, 2005. Accordingly, for taxable years ending after June 1, 2009, the net unrealized built-in gain of the first pool of assets is $0.

(iii) Under § 1.1374–2(a), X's net recognized built-in gain for any taxable year equals the least of X's pre-limitation amount, taxable income limitation, and net unrealized built-in gain limitation. In 2009, X's pre-limitation amount is $10,000, X's taxable income limitation is $50,000, and X's net unrealized built-in gain limitation is $0. Because the net unrealized built-in gain of the first pool of assets has been adjusted to $0, despite the $10,000 of recognized built-in gain in 2009, X has $0 net recognized built-in gain for the taxable year ending on December 31, 2009.

Example 3. Adjustment to net unrealized built-in gain for built-in loss in eliminated C corporation stock. (i) X, a calendar year C corporation, elects to become an S corporation effective January 1, 2005. On that date, X's assets (the first pool of assets) have a net unrealized built-in gain of negative $5,000. Among the assets in the first pool of assets is 10 percent of the outstanding stock of Y, a C corporation, with a fair market value of $18,000 and an adjusted basis of $33,000. On March 1, 2009, X sells an asset that it owned on January 1, 2005, resulting in $8,000 of recognized built-in gain. X has had no other recognized built-in gains or built-in losses. X's taxable income limitation for 2009 is $50,000. On June 1, 2009, Y transfers its assets to X in a reorganization under section 368(a)(1)(C).

(ii) Under paragraph (b) of this section, the net unrealized built in-gain of the first pool of assets is adjusted to account for the elimination of the Y stock in the reorganization. The net unrealized built-in gain of the first pool of assets, therefore, is increased by $15,000, the amount by which the adjusted basis of the Y stock exceeded its fair market value as of January 1, 2005. Accordingly, for taxable years ending after June 1, 2009, the net unrealized built-in gain of the first pool of assets is $10,000.

(iii) Under § 1.1374–2(a), X's net recognized built-in gain for any taxable year equals the least of X's pre-limitation amount, taxable income limitation, and net unrealized built-in gain limitation. In 2009, X's pre-limitation amount is $8,000 and X's taxable income limitation is $50,000. The net unrealized built-in gain of the first pool of assets has been adjusted to $10,000, so X's net unrealized built-in gain limitation is $10,000. X, therefore, has $8,000 net recognized built-in gain for the taxable year ending on December 31, 2009. X's net unrealized built-in gain limitation for 2010 is $2,000.

Example 4. Adjustment to net unrealized built-in gain in case of prior gain recognition. (i) X, a calendar year C corporation, elects to become an S corporation effective January 1, 2005. On that date, X's assets (the first pool of assets) have a net unrealized built-in gain of $30,000. Among the assets in the first pool of assets is all of the outstanding stock of Y, a C corporation, with a fair market value of $45,000 and an adjusted basis of $10,000. Y has no current or accumulated earnings and profits. On April 1, 2007, Y distributes $18,000 to X, $8,000 of which is treated as gain to X from the sale or exchange of property under section 301(c)(3). That $8,000 is recognized built-in gain to X under section 1374(d)(3), and results in $8,000 of net recognized built-in gain to X for 2007. X's net unrealized built-in gain limitation for 2008 is $22,000. On June 1, 2009, Y transfers its assets to X in a liquidation to which sections 332 and 337(a) apply.

(ii) Under paragraph (b) of this section, the net unrealized built in-gain of the first pool of assets is adjusted to account for the elimination of the Y stock in the liquidation. The net unrealized built-in gain of that pool of assets, however, can only be adjusted to reflect the amount of built-in gain that was inherent in the Y stock on January 1, 2005 that has not resulted in recognized built-in gain during the recognition period. In this case, therefore, the net unrealized built-in gain of the first pool of assets cannot be reduced by more than $27,000 ($35,000, the amount by which the fair market value of the Y stock exceeded its adjusted basis as of January 1, 2005, minus $8,000, the recognized built-in gain with respect to the stock during the recognition period). Accordingly, for taxable years ending after June 1, 2009, the net unrealized built-in gain of the first pool of assets is $3,000. The net unrealized built-in gain limitation for 2009 is $0.

n **Par. 3.** Paragraph (a) of § 1.1374–10 is revised to read as follows:

§ 1.1374–10 Effective date and additional rules.

(a) *In general.* Sections 1.1374–1 through 1.1374–9, other than § 1.1374–3(b) and (c) *Examples 2* through *4*, apply for taxable years ending on or after December 27, 1994, but only in cases where the S corporation's return for the taxable year is filed pursuant to an S election or a section 1374(d)(8) transaction occurring on or after December 27, 1994. Section 1.1374–3(b) and (c) *Examples 2* through *4* apply to section 1374(d)(8) transactions that occur in taxable years beginning after February 23, 2005. In addition, an S corporation may apply § 1.1374–3(b) and (c) *Examples 2* through *4* to section 1374(d)(8) transactions that occur in taxable years beginning on or before February 23, 2005, if the S corporation (and any predecessors or successors) and all affected shareholders file original or amended returns that are consistent with these provisions for taxable years of the S corporation during the recognition period of the pool of assets the net unrealized built-in gain of which would be adjusted pursuant to those provisions that are not closed as of the first date after February 23, 2005, that the S corporation files an original or amended return. For purposes of this section, affected shareholders means all shareholders who received distributive shares of S corporation items in such taxable years. However, the Commissioner may, in appropriate circumstances, permit taxpayers to apply these provisions even if all affected shareholders cannot file consistent returns. In addition, for this purpose, a predecessor of an S corporation is a corporation that transfers its assets to the S corporation in a transaction to which section 381 applies. A successor of an S corporation is a corporation to which the S corporation transfers its assets in a transaction to which section 381 applies.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 14, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

FR Doc. 05–3462 Filed 2–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9179]

RIN 1545–BB62

Uniform Capitalization of Interest Expense in Safe Harbor Sale and Leaseback Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to regulations relating to the capitalization of interest expense incurred in sale and leaseback transactions under the Economic Recovery Tax Act of 1981 (ERTA) safe harbor leasing provisions. The regulations affect taxpayers that provide purchase money obligations in connection with these transactions.

DATES: *Effective Date*: These regulations are effective February 23, 2005.

Applicability Dates: For dates of applicability, see § 1.263A–15(a)(3).

FOR FURTHER INFORMATION CONTACT: Christian Wood, 202–622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On May 20, 2004, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG–148399–02; 69 FR 29113) by cross reference to temporary regulations (TD 9129; 69 FR 29066) under section 263A(f) of the Internal Revenue Code (Code). These amendments pertain to the treatment of certain interest expense incurred by the lessor in a sale and leaseback transaction under the ERTA safe harbor leasing provisions (former section 168(f)(8), as enacted by section 201(a) of ERTA, Public Law 97–34, 95 Stat. 214). No comments in response to the proposed regulations or requests to speak at a public hearing were received, and no hearing was held. The proposed regulations under section 263A(f) are adopted by this Treasury decision.

Effective Date

These final regulations generally apply to interest incurred in taxable years beginning on or after May 20, 2004. In the case of property that is inventory in the hands of the taxpayer, these regulations apply to taxable years beginning on or after May 20, 2004. Taxpayers may elect to apply these regulations to interest incurred in taxable years beginning on or after January 1, 1995, or, in the case of property that is inventory in the hands of the taxpayer, to taxable years beginning on or after January 1, 1995 (the general effective date of the interest capitalization regulations).

In addition, for purposes of § 1.263A–15(a)(2), the exclusion of purchase money obligations given by the lessor to the lessee (or a party related to the lessee) in a sale and leaseback transaction under former section 168(f)(8) as enacted by ERTA will be considered to be a reasonable position for the application of section 263A(f) in taxable years beginning before January 1, 1995. Consequently, a taxpayer changing a method of accounting for property that is not inventory in the hands of the taxpayer to conform to these regulations may elect to include interest incurred after December 31, 1986, in taxable years beginning on or after December 31, 1986 (the general effective date of section 263A), and before January 1, 1995, in the determination of its adjustment under section 481(a). A taxpayer changing a method of accounting for property that

is inventory in the hands of the taxpayer to conform to these regulations must compute a section 481(a) adjustment and revalue its beginning inventory in the year of change as if the new method of accounting had been in effect during all prior years.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these regulations 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 these regulations are Christian Wood and Grant Anderson of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

n Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

n **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

n **Par. 2.** In § 1.263A–9, paragraph (a)(4)(ix) is added to read as follows:

§ 1.263A–9 The avoided cost method.

(a) * * *

(4) * * *

(ix) A purchase money obligation given by the lessor to the lessee (or a party that is related to the lessee) in a sale and leaseback transaction involving an agreement qualifying as a lease under § 5c.168(f)(8)-1 through § 5c.168(f)(8)–11 of this chapter. *See* § 5c.168(f)(8)–1(e) *Example (2)* of this chapter.

* * * * *

§ 1.263A–9T [Removed]

n **Par. 3.** Section 1.263A–9T is removed.

n **Par. 4.** In § 1.263A–15, paragraph (a)(3) is added to read as follows:

§ 1.263A–15 Effective dates, transitional rules, and anti-abuse rule.

(a) * * *

(3) Section 1.263A–9(a)(4)(ix) generally applies to interest incurred in taxable years beginning on or after May 20, 2004. In the case of property that is inventory in the hands of the taxpayer, § 1.263A–9(a)(4)(ix) applies to taxable years beginning on or after May 20, 2004. Taxpayers may elect to apply § 1.263A–9(a)(4)(ix) to interest incurred in taxable years beginning on or after January 1, 1995, or, in the case of property that is inventory in the hands of the taxpayer, to taxable years beginning on or after January 1, 1995. A change in a taxpayer's treatment of interest to a method consistent with § 1.263A–9(a)(4)(ix) is a change in method of accounting to which sections 446 and 481 apply.

* * * * *

§ 1.263A–15T [Removed]

n **Par. 5.** Section 1.263A–15T is removed.

Mark E. Mathews,

Deputy Commissioner for Services and Enforcement.

Approved: February 15, 2005.

Eric Solomon,

Acting, Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 05–3463 Filed 2–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD11–05–009]

Drawbridge Operation Regulations; Sacramento River, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the I Street Drawbridge across the Sacramento River, mile 59.4, at Sacramento, CA. This deviation allows the bridge to remain in the closed-to-navigation position. The deviation is necessary to repair the operating machinery to prevent unexpected drawspan failure.

DATES: This deviation is effective from 8 a.m. March 10, 2005, through 5 p.m. on March 17, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (oan), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437–3516.

FOR FURTHER INFORMATION CONTACT: David Sulouff, Bridge Section, (510) 437–3516.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad Company requested to secure the I Street Drawbridge, mile 59.4, Sacramento River, at Sacramento, CA, in the closed-to-navigation position from 8 a.m. March 10, 2005, through 5 p.m. on March 17, 2005, during essential operating machinery repair, to prevent unexpected failure of the draw span. The drawbridge provides 109 ft. vertical clearance in the full open-to-navigation position, and 30 ft. vertical clearance above Mean High Water when closed. The drawbridge normally opens on signal from approaching vessels, as required by 33 CFR 117.189.

The proposed work was coordinated with waterway users. It was determined that potential navigational impacts will be reduced if the repairs are performed during March 2005, resulting in Coast Guard approval of the proposed work from 8 a.m. March 10, 2005, through 5 p.m. March 17, 2005.

During these times, the drawspan may be secured in the closed-to-navigation position and need not open for vessels.

The drawspan will resume normal operation at the conclusion of the essential repair work. Mariners may contact the I Street Drawbridge by telephone at (916) 444–8999, in advance, to determine conditions at the bridge.

The drawspan will be unable to open during the repair. Vessels that can safely pass through the closed drawbridge may continue to do so at any time.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed to return the drawbridge to normal operation as soon as possible. This deviation from the operating regulations is approved under the provisions of 33 CFR 117.35.

Dated: February 14, 2005.

Kevin J. Eldridge,

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

[FR Doc. 05–3414 Filed 2–22–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7875–7]

Mississippi: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

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

DATES: This final authorization will become effective on April 25, 2005, unless EPA receives adverse written comments by March 25, 2005. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- E-mail: *middlebrooks.gail@epa.gov*.
- Fax: (404) 562–8439 (prior to faxing, please notify the EPA contact listed below).
- Mail: Send written comments to Gail Middlebrooks at the address listed below.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*, or e-mail. The federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. 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.

You can view and copy Mississippi's applications from 8 a.m. to 4:30 p.m. at the following addresses: Mississippi Department of Environment Quality, Hazardous Waste Division, 101 W. Capital, Suite 100, Jackson, Mississippi 39201; and EPA, Region 4, Library, 9th Floor, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8190.

FOR FURTHER INFORMATION CONTACT: Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8494.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

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

B. What Decisions Have We Made in This Rule?

We conclude that Mississippi's applications to revise its authorized program meet all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Mississippi Final authorization to operate its hazardous waste program with the changes described in the authorization application. Mississippi has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Mississippi, including issuing permits, until the State is granted authorization to do so.

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

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

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

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

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

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

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

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule.

You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

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

F. What Has Mississippi Previously Been Authorized for?

Mississippi initially received final authorization on June 13, 1984, effective June 27, 1984 (49 FR 24377) to implement the RCRA hazardous waste management program. We granted authorization for changes to Mississippi's program on August 17, 1988, effective October 17, 1988 (53 FR 31000), August 10, 1990, effective October 9, 1990 (55 FR 32624), March 29, 1991, effective May 28, 1991 (56 FR 13079), June 28, 1991, effective August 27, 1991 (56 FR 29589), May 11, 1992 effective July 10, 1992 (57 FR 20056), on April 8, 1993, effective June 7, 1993 (58 FR 18162), on October 20, 1993, effective December 20, 1993 (58 FR 54044), on March 18, 1994, effective May 17, 1994 (59 FR 12857), on June 1, 1995, effective July 31, 1995 (60 FR 28539), and on August 30, 1995, effective October 30, 1995 (60 FR 45071).

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

On March 26, 1996, and June 1, 2004, Mississippi submitted final complete program revision applications, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of comments that oppose this action, that Mississippi's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we grant final authorization for the following program changes:

Description of Federal requirement (revision checklist)	**Federal Register** date and page
Checklist 126, Testing and Monitoring Activities	9/19/94, 59 FR 46040.
Checklist 128, Wastes from the Use of Chlorophenolic Formulations in Wood Surface Protection	1/4/94, 59 FR 458.
Checklist 129, Revision of Conditional Exemption for Small Scale Treatability Studies	2/18/94, 59 FR 8362.
Checklist 130, Recycled Used Oil Management Standards; Technical Amendments and Corrections II	3/4/94, 59 FR 10550.
Checklist 131, Recordkeeping Instructions; Technical Amendment	3/24/94, 59 FR 13891.
Checklist 132, Wood Surface Protection; Correction	6/2/94, 59 FR 28484.
Checklist 133, Letter of Credit Revision	6/10/94, 59 FR 29958.
Checklist 134, Correction of Beryllium Powder (PO15) Listing	6/20/94, 59 FR 31551.
Checklist 135, Recovered Oil Exclusion	7/28/94, 59 FR 38536.
Checklist 136, Removal of the Conditional Exemption for Certain Slag Residues	8/24/94, 59 FR 43496.
Checklist 137, Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes.	9/19/94, 59 FR 47982.
Checklist 139, Testing and Monitoring Activities Amendment I	1/13/95, 60 FR 3089.
Checklist 140, Carbamate Production Identification and Listing of Hazardous Waste	2/9/95, 60 FR 7824.
Checklist 141, Testing and Monitoring Activities Amendment II	4/4/95, 60 FR 17001.
Checklist 142A, Universal Waste: General Provisions	5/11/95, 60 FR 25492.
Checklist 142B. Universal Waste Rule: Specific Provisions for Batteries	5/11/95, 60 FR 25492.
Checklist 142C, Universal Waste Rule: Specific Provisions for Pesticides	5/11/95, 60 FR 25492.
Checklist 142E, Universal Waste Rule: Petition Provisions to Add a New Universal Waste	5/11/95, 60 FR 25492.
Checklist 144, Removal of Legally Obsolete Rules	6/29/95, 60 FR 33912.
Checklist 145, Liquids in Landfills III	7/11/95, 60 FR 35703.
Checklist 148, RCRA Expanded Public Participation	12/11/95, 60 FR 63417.
Checklist 150, Amendments to the Definition of Solid Waste; Amendment II	3/26/96, 61 FR 13103.
Checklist 151, Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners.	4/8/96, 61 FR 15566.
Checklist 153, Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D	7/1/96, 61 FR 34252.
Checklist 154, Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers	11/25/96, 59 FR 59932.
Checklist 155, Land Disposal Restrictions Phase III—Emergency Extension of the KO88 Capacity Variance	1/14/97, 62 FR 1992.
Checklist 156, Military Munitions Rule: Hazardous Waste Identification and Management: Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of Ways on Contiguous Properties.	2/12/97, 62 FR 6622.
Checklist 157, Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions.	5/12/97, 62 FR 25998.
Checklist 158, Testing and Monitoring Activities Amendment III	6/13/97, 62 FR 32452.
Checklist 159, Conformance With the Carbamate Vacttur	6/17/97, 62 FR 32974.
Checklist 160, Land Disposal Restrictions Phase III—Emergency Extension of the KO88 National Capacity Variance, Amendment.	7/14/97, 62 FR 37694.
Checklist 161, Emergency Revision of the Carbamate Land Disposal Restrictions	8/28/97, 62 FR 45568.
Checklist 162, Clarification of Standards for Hazardous Waste LDR Treatment Variances	12/5/97, 62 FR 64504.
Checklist 163, Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment.	12/8/97, 62 FR 64636.
Checklist 164, Kraft Mill Steam Stripper Condensate Exclusion	4/15/98, 63 FR 18504.
Checklist 166, Recycled Used Oil Management Standards; Technical Correction and Clarification	5/6/98, 63 FR 24963; 7/14/98, 63 FR 37780.
Checklist 167A, Land Disposal Restrictions Phase IV—Treatment Standards for metal Wastes and Mineral Processing Wastes.	5/26/98, 63 FR 28556.
Checklist 167B, Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions	5/26/98, 63 FR 29556.
Checklist 167C, Land Disposal Restrictions Phase IV—Corrections	5/26/98, 63 FR 28556.
Checklist 167F, Exclusion of Recycled Wood Preserving Wastewaters	5/26/98, 63 FR 28556.

Description of Federal requirement (revision checklist)	Federal Register date and page
Checklist 168, Hazardous Waste Combustors; Revised Standards	6/19/98, 63 FR 33782.
Checklist 169, Petroleum Refining Process Wastes	8/6/98, 63 FR 42110.
Checklist 170, Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment	8/31/98, 63 FR 46332.
Checklist 171, Emergency Revision of the Land Disposal Restrictions Treatment Standards for Listed hazardous Wastes from Carbamate Production.	9/4/98, 63 FR 47410.
Checklist 174, Post-Closure Permit Requirement and Closure Process	10/22/98, 63 FR 56710.
Checklist 175, HWIR—Media	11/3/98, 63 FR 65874.
Checklist 176, Universal Rule—Technical Amendments	12/24/98, 63 FR 71225.
Checklist 177, Organic Air Emission Standards; Clarification and Technical Amendments	1/21/99, 64 FR 3382.
Checklist 178, Petroleum Refining Process Wastes—Leachate Exemption	2/11/99, 64 FR 6806.
Checklist 179, Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards	5/11/99, 64 FR 25408.
Checklist 180, Test Procedures for the Analysis of Oil and Grease and Non-Polar Material	5/14/99, 64 FR 26315.
Checklist 181, Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps	7/6/99, 64 FR 36466.
Checklist 182, Hazardous Air Pollutant Standards for Combustors	9/30/99, 64 FR 52828; 11/19/99, 64 FR 63209.
Checklist 183, Land Disposal Restrictions Phase IV—Technical Corrections	10/20/99, 64 FR 56469.
Checklist 184, Accumulation Time for Waste Water Treatment Sludges	3/8/00, 65 FR 12378.
Checklist 185, Organobromine Production Wastes Vacatur	3/17/00, 65 FR 14472.
Checklist 187, Petroleum Refining Process Wastes—Clarification	6/8/00, 64 FR 36365.

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

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

I. Who Handles Permits After the Authorization Takes Effect?

Mississippi will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. At the time the State program is approved, EPA will suspend issuance of Federal permits in the State. EPA will transfer any pending permit applications, completed permits or pertinent file information to the State within thirty days of the approval of the State program. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Mississippi is not yet authorized.

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

The State of Mississippi's Hazardous Waste Program is not being authorized to operate in Indian Country.

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

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

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

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

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective April 25, 2005.

List of Subjects in 40 CFR Part 271

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

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

Dated: February 2, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–3363 Filed 2–22–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 194

[Docket No. RSPA–03–16560; Amdt. No. 194–4]

RIN 2137–AC30

Pipeline Safety: Response Plans for Onshore Transportation-Related Oil Pipelines

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

ACTION: Final rule.

SUMMARY: On January 5, 1993, the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS) issued an interim final rule establishing oil spill response planning requirements for onshore oil pipelines (49 CFR Part 194). These regulations were issued pursuant to section 1321(j)(5) of the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA 90). OPS is now adopting the interim rule as a final rule. This final rule makes minor amendments to some of the regulations in response to the written public comments received after issuance of the interim final rule and at a public meeting held in 1997 in New Orleans, LA. The amendments also reflect the experience that OPS has gained in implementing the rule; leading spill response exercises; and, responding to actual spills and harmonizes certain OPS requirements with related oil spill response regulations developed by the U.S. Coast Guard. The amendments are generally technical in nature and do not involve additional costs to pipeline operators or the public.

DATES: This rule is effective March 25, 2005.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366–5523, U.S Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Room 2103, 400 Seventh Street, SW., Washington, DC 20590–0001, on the contents of this final rule, or the Dockets Facility, *http://dms.dot.gov*, (202) 366–1918, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, for copies of this final rule or other information in the docket. General information about OPS programs is on our Internet home page at *http://ops.dot.gov*. For information on OPA 90, first click on the ''Initiatives,'' then on ''OPA Initiatives.''

SUPPLEMENTARY INFORMATION:

Background

Section 1321(j)(5) of the FWPCA (33 U.S.C. 1251 *et seq.*), as amended by OPA 90 (Pub. L. 101–380, 104 Stat. 484), requires an operator of an onshore pipeline facility to prepare and submit an oil spill response plan when, because of its location, the facility could reasonably be expected to cause substantial harm to the environment if it were to discharge oil into navigable waters or adjoining shorelines.

On January 5, 1993, OPS published an interim final rule (58 FR 244) that created part 194 of Title 49 of the Code of Federal Regulations. The interim final rule implemented the requirements of OPA 90 and required all onshore oil pipeline operators to submit response plans for pipelines located where they could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging oil.

Under part 194, each response plan must include a core plan that provides an information summary (*e.g.*, operator address; description of response zones; contact information for designated spill response manager), and additional detail on immediate notification procedures; spill detection and mitigation procedures; the applicable response organization; response activities and response resources; government agencies that will provide support; training procedures; equipment testing; drill types, schedules, and procedures; and plan review and update procedures. In addition, each response plan must be consistent with the National Contingency Plan (NCP) (40 CFR part 300) and each applicable Area Contingency Plan (ACP).

Part 194 also requires each operator to identify and ensure, by contract or other approved means, the resources necessary to respond, to the maximum extent practicable, to a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of a worst case discharge.

Furthermore, the part 194 requires each operator to conduct specialized training for its personnel, particularly those responsible for reporting and responding to spills. Each response plan also must address equipment testing and provide for periodic unannounced drills. Operators must participate in any unannounced drills conducted by Federal officials, including activation of the appropriate oil spill removal organization and spill management team identified in the response plan. Since 1993 OPS has led over 100 exercises.

Pipeline facilities subject to part 194 include those that transport any of the following products: crude oil; refined petroleum products (*e.g.*, gasoline, diesel fuel, heating and fuel oils, kerosene, and jet fuel); vegetable and animal oil; sludge; oil refuse; and/or oil mixed with wastes other than dredged spoil. To date, 367 onshore pipeline facilities have submitted response plans in compliance with the interim final rule that established part 194.

There are two categories of onshore pipeline response plans, those involving pipelines capable of causing ''substantial'' harm to the environment and those capable of causing ''significant and substantial'' harm to the environment. OPA 90 does not define substantial harm or significant

and substantial harm. The OPA 90 Conference Report (H.R. Conf. Report No. 653, 101st Cong., 2d Sess., 101, reprinted in 1990 U.S. Code Cong. & Admin. News 779) states that nationwide criteria should be developed to determine those facilities which could reasonably be expected to cause ''substantial harm'' and are therefore required to submit response plans (OPA Conference Report, p. 829). It discussed oil storage capacity, environmentally sensitive areas, and drinking water supplies as relevant factors, and cautioned that facility age and oil storage capacity should not be the only criteria. The report states that the criteria should result in a broad requirement for facility owners and operators to prepare and submit plans, but that only a subset of these plans (*i.e.*, those addressing significant and substantial harm) will be reviewed and approved (OPA Conference Report, p. 829). The criteria for this subset are set forth in 49 CFR 194.103(c).

In order to gain a further understanding on implementing the regulation and on potential revisions to the part 194, OPS conducted a public meeting on January 29, 1997, in New Orleans, LA, to receive comments from interested parties. A copy of the transcript of the public meeting is in the docket for this rulemaking.

In 1999, major pipeline spills occurred in Simpsonville, SC; Atchison, KS; and Knoxville, TN. In 2000, a major pipeline spill occurred in Aquasco, MD. These spills illustrated the importance of spill prevention and response planning; adequate response equipment and workers; and, the mastery and effective use of incident command systems.

Investigations and analyses of major pipeline incidents by the National Transportation Safety Board (NTSB) and OPS have emphasized the importance of protecting people and the environment, particularly in densely populated areas and in areas that are unusually sensitive to environmental damage. This final rule incorporates lessons OPS has learned from reviewing these plans, leading oil spill exercises, and, responding to oil spills, as well as the comments received. The following is a summary of the clarifications and minor changes made by this final rule to the response planning regulations:

(1) Clarifies definition of ''adverse weather'' and makes it more consistent with the U.S. Coast Guard definition;

(2) Deletes four definitions as obsolete because they are not used in the rule;

(3) Deletes expired and no longer significant dates from §§ 194.7(a), (b), (c) and 194.119(e);

(4) Clarifies wording in § 194.101(a) to address which operators are required to submit response plans;

(5) Specifies the secondary containment credits for use of secondary containment and other spill prevention measures when calculating the worst case discharge based on breakout tank capacity in § 194.105(b)(3);

(6) Clarifies the ''substantial threat'' term and requirement in § 194.107(a) and allows operators to incorporate by reference certain procedures from the operator's maintenance and emergencies manuals, required under 49 CFR 195.402, to meet the requirement;

(7) Deletes § 194.107(b) to eliminate English language requirements;

(8) Revised § 194.107(c) to provide additional guidance on consistency of response plans with the NCP and ACPs;

(9) Revises § 194.107(d)(1)(ix) to clarify that the drill requirements can be met by following PREP or developing a functionally equivalent program;

(10) Add new § 194.107(d)(3) to clarify requirements for an operator's Incident Command System (ICS);

(11) Revises §§ 194.109(b)(2) and 194.113(b)(2) to allow operators the additional flexibility to use either the name or the title of the qualified individual. The revised sections also clarify the requirement for operators to list the name or title of an alternate qualified individual;

(12) Revises § 194.111(a) to allow operators to keep response plans where they are most likely to need them;

(13) Revises §§ 194.119(d) and (f) to clarify the authority of OPS to make a final determination where a Federal on-scene coordinator (FOSC) has concerns about the operator's response capability; to clarify that OPS may consider FOSC comments on response techniques, protecting fish, wildlife and sensitive environments and on consistency with the NCP; and to clarify that OPS remains the approving authority for the response plan;

(14) Revises § 194.121(a) to clarify that the resubmission of plans to OPS on a five-year cycle is from the date of submission or from the date of last approval; and

(15) Augments the guidelines in Appendix A with three, web-based government references. Because these changes are minor and technical in nature, and generally reflect existing industry practice, no additional burden will be placed on operators or the public.

Discussion of Comments

A summary of the written comments OPS received in connection with the issuance of the interim rule is available in the docket. OPS received additional comments in response to a notice of public meeting and request for comments held in January 1997 in New Orleans. A transcript of the public meeting is also in the docket.

The comments were generally supportive of the need for oil spill response planning requirements although many suggested modifications to the existing provisions in various sections. OPS reviewed these comments and the records of the public meeting and used them in developing this final rule.

Section 194.1, Purpose

No comments were received on § 194.1 and the section is unchanged.

Section 194.3, Applicability

Several commenters requested that OPS clarify those pipelines that are considered to transport oil under 49 CFR part 194. The commenters questioned the applicability of the response planning regulations to commodities such as natural gas and unstabilized condensate from natural gas wells.

Response

OPS believes a clarification is unnecessary. The FWPCA (33 U.S.C. 1321) does not specify substances considered to be oil. Rather, the FWPCA broadly defines oil and Federal agencies rely on the broad definition to determine substances that are regulated under the Act. The existing definition of ''oil'' in § 194.5 is consistent with this broad definition. Because the definition does not include highly volatile liquids (HVL), natural gas liquids (NGL), liquefied natural gas (LNG), or liquefied petroleum gas (LPG), OPS believes that it is clear that they are not considered to be oil under 49 CFR part 194.

Section 194.5, Definitions

Coastal Zone/Inland Zone/Inland Area/ Response Area

Several commenters noted that the terms Coastal zone, Inland area, Inland zone, and Response area are defined, but that these terms are not used in the regulations.

Response

OPS agrees and is removing these definitions as obsolete.

Adverse Weather

Some commenters stated that OPS should provide more specific guidelines or criteria on what constitutes adverse weather, noting that the U.S. Coast Guard (USCG) and the Environmental Protection Agency (EPA) have specific

criteria for significant wave height within the area in which recovery equipment and booms are expected to operate.

Response

In the interests of interagency consistency, OPS is adopting, in modified form, the USCG definition of adverse weather in 33 CFR 154.1020.

Contract or Other Approved Means

OPS received comments discussing the definition of contract or other approved means for insuring that the operator will have oil spill response resources. Some commenters said the definition was too restrictive.

Response

OPS disagrees and believes that the existing definition is consistent with the intent of the law. A fundamental requirement in response planning is to establish the operator's ability to have the personnel and equipment to respond to a discharge of oil or a substantial threat of a discharge of oil on to the navigable waters. Requiring an operator to have a written or other legally binding agreement between the operator and a response contractor or other spill response organization identifying is consistent with this intent.

Environmentally Sensitive Areas

OPS received several comments on the definition of environmentally sensitive areas. Commenters suggested that the term should be revised to reflect the specific areas that would be especially sensitive to oil discharges. Some commenters stated that the definition should be limited to areas where spills are likely to create significant long-term environmental harm. Others suggested that the definition should be consistent with the National Contingency Plan (NCP).

Response

In the years since Part 194 was established, all of the Area Contingency Plans (ACPs) have been published. The Area Contingency Plans include detailed information about resources in the area. OPS believes that the NCP and ACPs provide sufficient guidance to operators on environmentally sensitive areas. Because the definition is consistent with the ACP's and the NCP, OPS is not making any changes based on these comments.

High-Volume Areas

OPS received several comments stating that the existing definition of high-volume areas (HVAs) did not make clear whether high volume areas must have both high river velocity and heavy vessel traffic or only one of the listed criteria. One commenter stated that the interim final rule did not have enough information for an operator to determine what constitutes an HVA and suggested that the current definition be modified to allow operators to use their discretion. One commenter suggested that the concept was inappropriate because it was developed for vessel response plans and assumed that the risk of a spill was greater in busy ports with more vessel traffic. Another commenter suggested that the concept of HVA does not relate to the likelihood of a discharge.

Response

OPS believes the list of specific high-volume rivers in Appendix B of 49 CFR Part 194 provides sufficient guidance to pipeline operators. The list includes areas that not only have high vessel traffic and high river velocity but also have concentrations of pipelines. The list differs from the USCG list of high volume port areas in 33 CFR 154.1020 because the OPS list also includes the concentrations of pipelines.

Major River

OPS received three comments on the definition of ''major river.'' Two commenters stated that OPS should list major rivers in an appendix to the rule rather than refer to a list in a book. One of the commenters noted that the referenced book was not readily available.

Response

OPS agrees. We are deleting the definition of major river. A listing of major rivers can be found in Appendix B, High Volume Areas.

Maximum Extent Practicable

One commenter noted that the definition of ''maximum extent practicable'' should consider the economics involved and the intent of Congress to create a system in which the private sector provided most of the response resources.

Response

The definition in this rule is similar to the definition in the USCG and EPA's response planning rules. By maintaining the definition from the interim final rule, we are being consistent with the response planning regulations of other Federal agencies. No change is made to this definition.

Navigable Waters

One commenter suggested that the definition of ''navigable waters'' was too broad and would result in an increase in pipeline operational and administrative costs, including costs to the Federal Government associated with implementing these regulations. There was also concern that the broad definition of ''navigable waters'' in Part 194 would be applied to 49 CFR Part 195.412(b), requiring costly inspection and increased risk to pipeline personnel associated with inspecting pipeline crossings in navigable waterways.

Two commenters said that waters used for recreation should not be included in the definition. One commenter suggested that referring to waters with vessel traffic leads to a belief that a risk exists only where watercraft and pipelines are both present. The commenter also stated that part 194 should not attempt to address all areas of risk but only those where pipelines and vessels coexist. The commenters stated that the full intent of OPA 90 can be met by eliminating the definition of ''navigable waters'' and by focusing on areas where the environment or public drinking water supply can be damaged.

Two commenters stated that OPS should publish a list of navigable waters or major streams. One commenter stated that the definition was inconsistent with the preamble language and the definition was ambiguous because of the use of the terminology ''recreation'' and ''waters from which fish or shell fish are taken and sold.'' They suggested using the USCG definition in 33 CFR 2.05–25 because that definition is tied to the FWPCA and the regulated community is familiar with that definition. One commenter stated that the terms ''recreation'' and ''fisheries'' should be removed or considered under the definition of sensitive areas.

Response

The definition of navigable waters in part 194 is a slightly modified version of the EPA definition in the NCP at 40 CFR 300.5 and 40 CFR part 110. OPS believes that the regulated community understands this definition because it is based on the FWPCA definition of navigable waters at 33 U.S.C. 1362. OPS will not develop a list of navigable waters because it is well established that Congress intended to broadly define navigable waters in the FWPCA. In addition, the OPA 90 Conference Report reflects the intent of Congress that facilities near sensitive areas such as public drinking water supplies generally should not be omitted from spill response planning requirements (Conference Report 101–653, p. 829). Accordingly, OPS has decided to retain the current definition.

Oil

Several commenters suggested that the definition of ''oil'' be limited to crude oil and petroleum products that could be recovered. These commenters further suggested excluding petroleum or petroleum products classified as HVLs, NGLs, LNG, or LPG. One commenter suggested that the definition should remain largely unchanged. Another commenter stated that the current definition does not include all the products that Congress intended to fall within the OPA 90 definition.

Several commenters stated that highly volatile liquids such as propane and butane should not be considered oil. Another commenter stated that the definition should be clarified to exclude trace amounts of condensate in gas pipelines. Another commenter stated that OPS should not use the USCG definition and resulting list of substances considered to be oils because the variety of products shipped by barge is much greater than oil products transported by pipeline.

Response

In February 1995, the USCG prepared a list of substances considered oil for response planning. Because HVLs, NGLs, LNG, and LPG are absent from the USCG's list, OPS concluded that these substances are not considered oil under the FWPCA. OPS also believes that in the course of implementing the provisions of part 194, operators gained an understanding of the substances considered to be oil under the rule. OPS is not changing this definition.

Oil Spill Removal Organization

OPS received three comments on the definition of the term ''oil spill removal organization'' (OSRO). One commenter stated that the terminology may imply that OPS is referring to USCG-classified OSROs. Another commenter suggested that because many small contractors have response resources, the definition should be revised to include only those entities engaged exclusively in spill response. Another stated that the definition should be amended to include companies that will use their own resources, and that the definition should refer to ''for profit, nonprofit, and in-house resources.''

Response

OPS is retaining the definition because it is sufficiently flexible to apply to different types of organizations that may be called on to respond to a discharge of oil. Narrowing the definition could exclude organizations that can help respond effectively.

Pipeline

Three commenters addressed the definition of ''pipeline.'' One commenter stated that the definition of pipeline in these regulations should encompass all parts of an onshore pipeline facility OPS regulates.

Response

OPS believes that this definition is sufficiently inclusive. The current definition of pipeline includes all parts of an onshore pipeline facility through which oil moves including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. OPS notes that some tanks are used as breakout tanks even though the pipelines transporting oil to and from the tanks have different operators. These tanks are still subject to part 194 under a 1971 Memorandum of Understanding (MOU) between EPA and DOT (36 FR 24080; December 18, 1971). Therefore, OPS is not changing the definition of ''pipeline''.

Qualified Individual

Two commenters stated that the definition of ''qualified individual'' should be identical to that in 33 CFR 154.1026.

Response

OPS is not revising the definition of qualified individual to be identical to the 33 CFR.154.1026 because the current definition meets the intent of the statute. However, OPS is revising § 194.113(b)(2) to allow the operator to identify one qualified individual and one alternate qualified individual either by title or by name, and list their 24-hour telephone numbers.

Response Zones

OPS received several comments on the definition of ''response zones.'' One commenter endorsed the response zone concept, which he said was an excellent method of tracking responsibilities and resources. Another commenter said that geographic response plans are valuable because they can contain specific response activities and strategies throughout the geographic area. One commenter suggested that a response zone should be defined in terms of response needs and that the linear distance should be limited to 500 miles. Another commenter suggested that a response zone should be defined by response strategy (the type of response necessary to contain and cleanup the spill). Another commenter suggested that the response zone should be defined by using the time requirements established in the response planning regulations for mobilizing response resources. One commenter suggested that the definition was satisfactory as currently provided in the regulation. Another commenter noted that he had prepared facility-specific response plans for three different Federal agencies and requested that OPS consider allowing a facility to prepare an overall geographic response plan that would facilitate the preparation of shorter response plans specific to the personnel and characteristics of each region. Another commenter endorsed the value of response zones and expressed support for the Integrated Contingency Plan (ICP) format to plan for multiple facilities within a given geographic area or under a single qualified individual but asked for additional flexibility in determining the need for multiple response zones.

Response

OPS intent is to give operators as much flexibility as possible in developing facility response plans. This approach is reflected in the current definition of a response zone. ''Response zone means a geographic area either along a length of pipeline or including multiple pipelines, containing one or more adjacent line sections, for which the operator must plan for the deployment of, and provide, spill response capabilities. The size of the zone is determined by the operator after considering available capability, resources, and geographic characteristics.'' Although OPS appreciates the logic associated with the preparation of purely geographic plans, OPS believes that the flexibility provided by the definition has proven to be effective in plan development. Therefore, OPS is not revising the definition of response zone.

Worst Case Discharge

OPS received comments on the definition of ''worst case discharge.'' These comments are summarized in the discussions on § 194.105.

Section 194.7, Operating Restrictions and Interim Operating Authorization

No comments were received on § 194.7. However, the February 18 and August 18, 1993, dates listed are no longer significant. As an administrative measure, OPS is removing dates from the section.

Section 194.101, Operators Required To Submit Plans

OPS received numerous comments seeking clarification on which oil pipelines were subject to part 194's response planning requirements. One commenter contended that the current language in § 194.101(a) was confusing and subject to misinterpretation. OPS received nine comments on the exceptions from plan preparation in paragraph (b) for small and distant pipelines. Two of these commenters expressed concern about the distant pipeline exception, stating that if containment can not be accomplished within four hours for larger lines and twelve hours for smaller lines, the result is likely to be contamination of environmentally sensitive areas and public drinking water supplies obtained from ground water sources—regardless of the distance.

One commenter suggested that OPS define one of the criterion associated with the exception in paragraph (b)(1), the term ''proximity to navigable waters''. Another commenter suggested that OPS eliminate the proximity criterion because under the current definition of navigable waters, almost any small pipeline will be in proximity to navigable waters.

One commenter disagreed with the 1,000 barrel discharge within five years criterion and suggested eliminating it because a discharge of 1,000 barrels could cause significant and substantial harm to the environment. Another commenter took issue with using historical spill records as a criterion. He contended that the absence of large spills over five or ten years is not a good measure of the risk of future spills given the age of some pipeline systems. One commenter recommended that § 194.101(b)(1)(ii) be revised to grant an exception to a pipeline that has not had two or more releases greater than 50 barrels resulting in polluting any stream, river, lake, reservoir, or similar body of water that violated applicable water quality standards. Other commenters suggested that inspection and repair records be included as criteria for exemption from preparing a response plan.

Response

OPS agrees that the scope of the exceptions for small and distant pipelines is very limited. With regard to small pipelines, the OPA 90 Conference Report states that the basic requirement to prepare and submit response plans should be broadly applied because under certain circumstances ''even discharges from small facilities can result in considerable damage to the environment'' (Conference Report 101–653, p. 829). Regardless of their size, the only pipelines that are unlikely to cause substantial harm to navigable waters, adjoining shorelines, public drinking water supplies, and other environmentally sensitive areas in the event of a worst case discharge are pipelines that are not in proximity to these areas. In practice, this means that the small pipeline exception can only apply if the small pipeline is also a distant pipeline. With regard to distant pipelines, the OPA 90 Conference Report pointed out that even ''unregulated, low pressure pipelines have leaked significant quantities of oil into our Nation's waterways.'' Locations that appear to be distant from open waters may be in proximity to various water resources including drinking water supplies and other sensitive areas and as a result, are likely to cause substantial harm in the event of a worst case discharge. Therefore, consistent with the intent of the statute, the small and distant pipeline exceptions must be narrowly construed and virtually all onshore oil pipelines are considered at least ''substantial harm'' facilities for purposes of part 194. Accordingly, all onshore oil pipeline operators, with the rare exception of those who can prove that their pipelines meet the strict criteria in § 194.101(b)(1) and (2), are required to prepare and submit oil spill response plans to OPS/OPS in accordance with § 194.119(a).

Although OPS modified paragraph (a) to clarify this point, OPS does not anticipate additional plan submissions because OPS believes all affected operators have already submitted response plans.

FOSC Requests

OPS received 11 comments on the handling of a Federal on-scene coordinator's (FOSC) request that OPS require a response plan be prepared and submitted for a pipeline or line section that would otherwise be exempt from 49 CFR part 194. These comments are addressed in connection with the discussion on submission and approval procedures in § 194.119 below.

Section 194.103, Significant and Substantial Harm: Operator's Statement

Although, as discussed above, all onshore oil pipeline operators are expected to develop and submit response plans, under OPA 90 only those plans for pipeline facilities that pose both a significant and substantial threat of harm to the environment require OPS approval. Under § 194.103(a), if an operator expects any line section in a response zone to cause both significant and substantial harm, then the operator must submit a statement with its response plan listing the significant and substantial harm line sections. This statement by the operator facilitates our identification of those plans requiring OPS approval. The OPA 90 Conference Report directed the RSPA Administrator to establish criteria by which those plans requiring prior approval would be selected. Report language discussed oil storage capacity, environmentally sensitive areas, and drinking water supplies as relevant factors, and cautioned that facility age and oil storage capacity should not be the only criteria. The significant and substantial harm criteria are currently set forth in § 194.103(c)(1) through (5). Several commenters took issue with various aspects of these criteria.

Historical Spill Data

With respect to § 194.103(c)(1) and (2), we received four comments on the use of historical spill data in determining significant and substantial harm. One commenter recommended that references to historical incidents contained in § 194.103(c)(1) and (2) be omitted because they have little bearing on spill harm or consequence. Another commenter noted that some consideration should be given to the type of corrective action taken as a result of previous spills.

Response

In our view, however, historical spill data is an appropriate factor for us to consider when deciding which response plans are appropriate for the approval process, because it aids in focusing our limited resources on reviewing those plans associated with facilities where known risks may be present.

Electric Resistance Welded Pipe

With respect to § 194.103(c)(3), one commenter contended that there was no scientific basis for establishing significant and substantial harm on the basis of the presence of electric resistance welded (ERW) pipe manufactured prior to 1970, operating at certain stress levels.

Response

OPS disagrees. Our accident statistics clearly show that at certain stress levels, ERW pipe manufactured before 1970 is inherently susceptible to fracture and preferential corrosion. Two studies, along with our accident data for liquid and natural gas transmission pipelines, show that failures in older ERW pipes greatly outnumber those in ERW pipe produced after 1970. Since 1970, pipe

manufacturers have changed to high frequency current for fusion heat and improved quality control for ERW pipes. These changes led to a significant decrease in the number of ERW pipe seam failures. This decrease is so significant that it cannot be attributed to any factors other than the change to high frequency current and quality control improvements. Therefore, we are retaining this criterion.

Buffer Zone Dimensions

Six comments were received regarding the criterion in § 194.103(c)(4) and (5) establishing ''significant and substantial harm'' to include a line section located within certain linear distances from drinking water intakes and environmentally sensitive areas. Three of the comments concerned the role of this criterion in the significant and substantial harm determination. One commenter asserted that drinking water intakes and environmentally sensitive areas should be equally protected, noting that the OPA 90 Conference Report made no distinction between the two and requires that both be protected in the event of a spill. This commenter recommended that an operator of any oil pipeline located within 5 miles of an environmentally sensitive area be required to prepare and submit a response plan. One commenter contended that the distances from drinking water intakes and environmentally sensitive areas should only be relevant when the line section crosses a major river or waterway. Another commenter noted that an oil discharge from a pipeline can also affect ground waters and that this should be taken into account in determining the level of harm that could reasonably be expected in the event of a discharge and taken into account for determining which plans should require approval.

Response

In our view, the clear intent of OPA 90 requires us to recognize the potential harmful effects of oil discharges on environmentally sensitive areas and drinking water sources. The fact that most pipelines are located underground, and contamination of ground waters can ultimately impact surface waters and adjoining areas indicates that a response plan must contain response strategies to protect drinking water sources and environmentally sensitive areas. Moreover, the FWPCA requires these areas be identified in the relevant ACP(s) and response plans be consistent with these ACPs. Accordingly, we are retaining the linear distance criteria in § 194.103(c)(4) and (5). Overall, we believe that the § 194.103(c) criteria for determining whether a line section can be expected to cause significant and substantial harm, are appropriate at this time. We may consider revising these criteria in the future if experience indicates that such a change is needed. We reserve the right to check all pipeline facility response plans for completeness, regardless of the level of harm the operator designates.

Treatment of Response Zones

Under § 194.103(b), if an operator expects a line section in a response zone to cause significant and substantial harm, then the entire response zone must be treated as if it could cause significant and substantial harm. Two comments were received stating that § 194.103(b) should be revised. The commenters contended that pipeline operators should not be burdened with planning for areas within a response zone but relatively distant from the pipeline sections capable of causing significant and substantial harm. Two other commenters questioned the criterion. They suggested that only the line section that met the criterion, rather than the zone, be so designated.

Response

OPS disagrees that a revision is warranted. Response zones are based on geographic and regional considerations including topography, hydrology, climate, and population. OPS requires operators to submit a response plan for each pipeline, not for each line section and requires a separate appendix for each response zone. OPS expects operators to fully analyze the potential impact of a spill throughout each response zone.

Section 194.105, Worst Case Discharge

Secondary Containment Credits

RSP/OPS received numerous comments on the practice of reducing the worst case discharge calculation from breakout tanks that have secondary containment dikes, and other prevention measures.

One commenter stated that Washington State does not allow operators to take credit for secondary containment and that the worst case discharge calculation is only to establish a planning volume. Another commenter stated that it was inappropriate to allow for a reduction of the maximum drainage volume calculation because a review of incidents associated with storage tanks shows it is not uncommon to experience at least a partial failure of containment systems.

Commenters also suggested varying amounts of credit for secondary containment, some up to 100 percent, depending on the spill prevention measures an operator has in place. Others opposed predetermined credits, arguing instead that operators should use site-specific risk assessment methods to establish the appropriate containment credit.

Response

In 49 CFR 194.105(b)(3), the rule allows operators to reduce the calculated worst case discharge from a breakout tank due to secondary containment. Reductions in the calculated worst case discharge are referred to as credits. The interim final rule is not specific as to how much credit an operator is allowed.

In 40 CFR Part 112, EPA allows up to 20 percent secondary containment credit in certain cases for tanks under its jurisdiction. Since 1994, our policy has allowed operators to claim up to a 50 percent secondary containment credit in calculating their worst case discharge for facilities with breakout tanks. The 50 percent credit policy was based on examining tank accident statistics and a 1992 position paper from the American Petroleum Institute.

Under certain circumstances, we approved claims for credit of up to 75 percent where operators were able to demonstrate that more spill prevention measures were in place. OPS believes, based on our analysis, that routine spill prevention credits higher than 75 percent are not justified.

OPS reviewed incidents from 1987 to 1999 involving spills from breakout tanks. During that period, 189 breakout tank spills were reported. Of the 179,606 barrels of oil spilled, 139,015 barrels of oil were recovered. A variety of factors may have contributed to the amount of oil lost, including oil volatility and whether there was a fire. However, over 12 years, only 77 percent of the oil spilled from breakout tanks was recovered. In addition, although secondary containment at breakout tanks generally prevented loss of the entire tank volume, there are documented cases of accidents in which the secondary containment system partially failed.

OPS's goal is to focus breakout tank operators' efforts on prevention, so that there are fewer spills. OPS believes that if the credits for preventing spills from breakout tanks are too small, operators may shift their planning emphasis from higher-risk areas along their rights-of-way, to tank farms that may pose smaller environmental risks.

Accordingly, the following table which specifies the amount of prevention credit an operator can

routinely claim has been incorporated as a new subparagraph (b)(4).

Prevention measure	Standard	Credit (percent)
Secondary containment > 100%	NFPA 30	50
Built/repaired to API standards	API RP 620/650/653	10
Overfill protection standards	API RP 2350	10
Testing/cathodic protection	API RP 650/651/653	5
Maximum allowable credit		75

OPS will entertain higher credits only on a case-by-case basis upon petition for waiver by a pipeline operator.

Supervisory Control

A commenter suggested OPS consider giving pipelines equipped with a supervisory control and data acquisition (SCADA) systems with a leak detection capability containment credits on a tiered basis, noting that since the use of SCADA systems was not mandatory, tiered credits would promote the use of such systems.

Response

OPS is not granting specific credit for reducing worst case discharge based on the use of SCADA systems because these systems are highly variable in their leak detection capabilities. In addition, the SCADA systems are for data collection and system control rather than part of a secondary containment system. However, we have seen significant improvement in these systems since they were first introduced. Operator's may now use leak detection systems enhancements as a mitigative measure in their integrity management programs and we may revisit the issue of granting response planning credits pending further advances in leak detection.

Weather

OPS received several comments on the role of weather in calculating the worst case discharge. One commenter noted that weather conditions would have a great effect on response capability. Other commenters noted that although the basic method for calculating worst case discharge was satisfactory, the rule should also include specific guidelines for planning for discharges that occur in adverse weather, at night, or that result from natural disasters, such as hurricanes and earthquakes.

Response

The current definition of worst case discharge requires consideration of adverse weather conditions. Although we have not specified how these effects must be weighed, operators are required to consider the weather history for the area surrounding the pipeline and the effects of adverse weather on the time needed to shut down a pipeline. OPS does not find a benefit by adding the new or additional terminology.

Maximum Drainage Volume/Maximum Shutdown Response Time

OPS received several comments on maximum drainage volume and maximum shutdown response time calculations. These calculations are based on historic discharge date or, in the absence of such historic data, the operator's best estimate, multiplied by the maximum flow rate. One commenter requested definitions for ''maximum shutdown response time'' and ''maximum drainage volume'' be inserted into part 194.

Response

OPS believes the existing rule has clear procedures for calculating worst case discharge volumes from line sections and the text explains that worst case means the largest volume. OPS does not find a benefit by adding the new or additional terminology.

Section 194.107, General Response Plan Requirements

OPS received several comments requesting clarification on the requirement for each response plan to identify resources for responding to a worst case discharge or a substantial threat of a worst case discharge. Commenters noted an NTSB report on the 1994 San Jacinto Flood recommended that OPS require liquid pipeline operators to address substantial threats in their facility response plans.

Response

On January 24, 1997, OPS issued a Pipeline Safety Alert Notice (ALN 97–01) to remind the regulated community of the importance of planning not only for a worst case discharge but also for a substantial threat of a worst case discharge. Although OPS does not require response planning for less than a worst case discharge, an operator may nevertheless benefit from planning responses to smaller discharges because they are more likely to occur, and may require different types and quantities of response equipment. OPS is revising § 194.107(a) as a result of these comments.

In order to minimize the burden on the regulated community, operators may incorporate by reference, procedures developed under 49 CFR 195.402 to address these requirements. Operators may refer to the appropriate section of their operations and maintenance manuals required under § 195.405(a). Operators need not submit their entire procedural manuals developed under § 195.402. However, OPS reserves the right to request a copy of the relevant portion of the procedural manual as part of the response plan review.

Other Than English

OPS received one comment requesting that criteria be specified for determining when it is necessary to develop a response plan in a language other than English.

Response

The intent of this provision is to ensure that personnel implementing response plans are able to read the plan. If the personnel implementing a plan can read in English, there is no need to produce the plan in more than one language. If a plan were written in more than one language, only the English version would need to be submitted to us. OPS has not received any plan in a language other than English and expects that response plans will continue to be submitted in English. OPS is deleting § 194.107(b) because it is not necessary.

Consistent With NCP/ACP

We received several comments and many operator requests for clarification on how an operator can certify that a plan is consistent with NCP and applicable ACPs.

Response

In the course of OPS' iterative plan review process we identified detailed information for determining consistency with the NCP and applicable ACPs. We are modifying the text of paragraph (c)

and adding a redesignated paragraph (b) to reflect this information.

As a minimum, to be consistent with the NCP a facility response plan must: (1) Demonstrate an operator's clear understanding of the function of the Federal response structure, for example, the plan must contain a procedures to notify the National Response Center and set forth the relationship between the role of the operator's response organization and the role of the FOSC in pollution response; (2) establish provisions to ensure the safety at the response site; and (3) identify the procedures to obtain any required Federal and State permissions for using alternative response strategies, such as in-situ burning and dispersants as provided for in the applicable ACPs.

At a minimum, to be consistent with the applicable ACP, the plan must: (1) Address the removal of a worst case discharge and the mitigation or prevention of a substantial threat of a worst case discharge; (2) identify environmentally and economically sensitive areas; (3) describe the responsibilities of the operator and of Federal, State and local agencies in removing a discharge and in mitigating or preventing a substantial threat of a discharge; and (4) establish the procedures for obtaining an expedited decision on use of dispersants or other chemicals.

Drills and Exercises

OPS received several comments on § 194.107(d)(1)(ix) covering drills and exercises; and on ''Guidelines for Developing and Evaluating an Oil Spill Response Exercise: A Handbook for Preparedness for Response Exercises (PREP),'' which was developed to support operator compliance with this paragraph. Two commenters wrote that § 194.107(d)(1)(ix) should specifically refer to the PREP guidelines. Two commenters requested that more guidance documents be made available, especially on how to conduct an exercise program. One commenter requested guidance on conducting exercises for multi-zone response plans.

Response

OPS is not making the PREP guidelines mandatory. However, OPS is revising § 194.107(d)(1)(ix) and redesignating this as new paragraph (c) to clarify that an operator will satisfy the requirement for drills by following PREP guidelines. An operator choosing not to follow PREP guidelines must have a drill program that is equivalent to PREP. The operator must describe the drill program in the response plan and OPS will determine if the program is equivalent to PREP. This revision is consistent with the USCG exercise requirements in 33 CFR Part 154. OPS is also providing response plan guidelines in Appendix A by adding a reference to the PREP guidelines.

Integrated Contingency Plan

OPS received two comments on using the National Response Team's Integrated Contingency Plan (ICP) format published in the **Federal Register** on June 5, 1996 (61 FR 28642). (See discussion under § 194.119 for more comments on ICP format. One commenter stated that OPS should reword or reorganize the format of a response plan to be more consistent with ICP guidelines. He suggested that § 194.107(d) be revised to use the ICP concepts of response plan, core plan, and appendices rather than addressing each zone independently. Another commenter encouraged consistency with the ICP and stated that a format similar to the ICP should simplify the demand on facilities.

Response

OPS strongly endorses using the ICP format to organize a response plan. OPS believes the ICP is a highly functional document that can be used in a variety of emergencies to meet several agencies' requirements, including Part 194. Although the ICP format is the preferred method of response planning to meet federal spill contingency planning regulations using the ICP format is not mandatory because OPS believes an operator should have the flexibility to organize their response in the manner which best fits their operational situation. Operators using the ICP format must include a cross-reference in their response plan. OPS does not find a benefit by adding the new or additional terminology.

National Interagency Incident Management System

A commenter suggested that OPS adopt the National Interagency Incident Management System (NIIMS) and require operators to be trained in NIIMS. The NCP (40 CFR 300.150) requires that response actions comply with the Occupational Health and Safety Administration (OSHA) provisions for worker health and safety in 29 CFR 1910.120(q)(3). The OSHA rule requires implementing an incident command system (ICS), which is further explained in Section 6, Appendix C of 29 CFR 1910.120.

Response

As part of the requirement to be consistent with the NCP and the ACPs, OPS requires operators to use incident command systems (ICS), including unified command system procedures for spill response. OSHA previously required training in the ICS appropriate to the role the participant plays. OPS does not require training in ICS.

OPS fully endorses NIIMS (now called the National Incident Management System (NIMS), but will accept other ICSs if they adequately address the following five functional areas: finance, logistics, operations, planning, and command. More information on NIMS is available on the USCG's Web site, *http://www.uscg.mil/USCG.shtm*. OPS is adding a new § 194.107(c)(3) to clarify a facility response plan must include a description of the operator's response management system including the five functional areas. The plan must also demonstrate the operator's response management system uses common terminology and has a manageable span of control, a clearly defined chain of command, and sufficient trained personnel to fill each position.

Section 194.107(d)(2), which lists the information required in a response zone appendix, has also been modified to reflect the change from § 194.107(d) to § 194.107(c). Although not the subject of a specific comment, RSPA is also clarifing that an operator submitting a response plan for a single response zone does not have to have a core plan and a response zone appendix. The operator of a single response zone onshore pipeline shall have a single summary in the plan that contains the required information in § 194.113.

Section 194.109, Submission of State Response Plans

OPS received four comments on submitting State response plans and on the plan's format. One commenter requested that OPS retain the provisions that allow operators to submit a response plan originally developed to meet State requirements. The commenter requested that OPS allow a State plan to be submitted to us even before the State approves the plan. Another commenter endorsed using approved State plans and commended our efforts to streamline the response planning requirements. One commenter noted that State agencies may complain that a plan is too large, and requested that OPS consider this criticism when streamlining the plan process. Another commenter stated that all plans should be required to follow the same format to ensure consistency, ease of review and ease of use. He noted that when a pipeline operator submits a State response plan, the supplementary

information should follow a consistent format.

Response

OPS is retaining § 194.109 and will continue to accept a response plan prepared for a State when the State plan has equivalent or greater environmental protection, in order to provide maximum flexibility to operators in preparing response plans. Although not the subject of a specific comment, OPS is also revising § 194.109(b)(2) to be consistent with the change to § 194.113(b)(2).

Section 194.111, Response Plan Retention

OPS received several comments on retaining response plans. One commenter noted that the requirement to retain a copy of the plan at the operator's headquarters is confusing because there are many different levels of headquarters offices. He suggested that a plan be retained at a designated office of record for the affected facilities and at designated locations where the plan will be activated. One commenter noted that EPA required a plan at the nearest field office. Two commenters noted that it was unnecessary to keep a plan at a pump station because many pump stations were unmanned. One commenter suggested that the regulations be amended to require a plan only at a manned pump station or pipeline facility. Another commenter agreed, adding that requiring a plan at unmanned locations where response activity might take place would be impractical and burdensome. Three commenters suggested that a core plan and appendices be kept at the location from which operator personnel would be dispatched. Another commenter stated that the qualified individual should not be required to have a copy of a plan if copies are available at the locations listed in § 194.111(a). One commenter questioned the need for a qualified individual to have a copy of the entire plan when the qualified individual is responsible for only a portion of the facility.

Response

OPS is revising § 194.111 by deleting § 194.111(a) and its subsections (1),(2), and (3). We are replacing these with a new subsection (a) requirement for operators to maintain relevant portions of their response plans at headquarters and at other locations from which response activities may be conducted, such as in field offices, supervisors' vehicles or spill response trailers. This change will allow operators the discretion to determine the most appropriate locations for copies of the plan.

Section 194.113, Information Summary

OPS received 10 comments on the information summary required in § 194.113. One commenter noted that § 194.113(a)(2) should be revised to eliminate the listing of one or more line sections meeting the requirements for significant and substantial harm. Instead, he suggested replacing it with a list and description of the response zones, including all counties and States that each zone encompasses and the level of harm the operator's pipeline poses in that zone.

Two commenters suggested that § 194.113(b)(1) be revised to remove the requirement that the response zone appendix contain the information summary sheet for the core plan. Another commenter took issue with the statement in the preamble to the interim final rule, on the need for an operator to provide a duplicate copy of the information summary sheet from the core plan with each response zone appendix.

Three commenters requested that § 194.113(b)(2) be revised to require only the title of the qualified individual, so that the operator would not have to update the plan when personnel changed. Two commenters stated that the plan should list the name and telephone number of an alternate qualified individual in addition to those of the qualified individual. Another commenter stated that naming specific individuals, along with their phone numbers, contractors, and employees would do little to enhance the pipeline operator's response capability.

Response

OPS believes that the information summary concerns expressed by the commenters are largely resolved through the iterative process of plan review and generally do not require further clarification or change. OPS agrees that the summary should require only the title of the qualified individual, so that the operator would not have to update the plan when personnel change. The plan should also list the name and telephone number of an alternate qualified individual in addition to those of the qualified individual. We are revising §§ 194.113(b)(2) accordingly.

Section 194.115, Response Resources

OPS received 22 comments on § 194.115. Several comments concerned the tiering of response resources. Tiering is the concept of having a certain amount of personnel and response equipment on-scene within a specified amount of time. Each increment of time, with its associated level of resources, is called a tier.

Current regulations require operators to identify in their spill response plan the resources that are available to respond for three tiers, that is, within 12, 36, and 60 hours, respectively. For high volume areas, the response times for the three tiers are 6, 30, and 54 hours, respectively. Five commenters endorsed the concept of tiers, including the concept of high volume areas. Another commenter noted that the tier requirements should be planning standards rather than performance standards, because on the day of a discharge circumstances may be different. Another commenter noted that the tiered approach should represent the minimum amount of resources that would be acceptable.

Several commenters offered alternative response times, such as Tier 1, 12 to 24 hours; Tier 2, 30 to 48 hours; and Tier 3, 60 to 80 hours. Another commenter stated that the preamble to the interim final rule offered an example of the tiered approach but that the regulatory text in § 194.115 did not have criteria. He suggested that § 194.115 should clearly explain our approach. Another commenter suggested that operators should have the discretion to identify personnel and equipment to meet the tiered response for the worst case discharge.

Another commenter noted that operators in remote areas need a different strategy because the areas may not be adequately protected under the regulation. One commenter noted that ACPs should be used as a reference in establishing the amount and type of response resources. He said that using ACPs for this task is appropriate because the ACPs would be kept up-to-date and consistency with ACPs is required. Another commenter responded to a statement in the interim final rule preamble on limitations for particular response zones including limitations on the types of equipment suitable for response in ACPs.

Another commenter noted that the regulations do not identify the level of capability that OPS would consider sufficient within the tiers. As a result, operators and response contractors may not be clear on what is required of them. One commenter noted that although the preamble to the interim final rule says that many of the recommendations of the USCG Response Planning Negotiated Rulemaking Committee were adopted, OPS departed from the Committee's recommendations on response times and response equipment. Several commenters stated that OPS

should adopt the tiered concept and specify the amount of response equipment required under each tier from the USCG's or the EPA's response planning regulations.

Two commenters addressed the subject of caps on the amount of required equipment that must be under contract, as developed in the USCG's Response Planning Negotiated Rulemaking and used in the USCG and the EPA's response plan rules. Both commenters endorsed the concept but one suggested doubling the caps in the USCG's regulations. The other commenter suggested that because resources may be insufficient in many areas of the country, OPS should specify caps for response resources that must be under contract.

OPS received several comments on specific equipment requirements under § 194.115. One commenter questioned how OPS defines sufficient resources and asked us to define reasonable levels of resources for each of the three tiers. OPS received four comments calling for adopting standards for measuring the adequacy of an operator's response equipment. One commenter noted that adopting requirements parallel to the USCG's and EPA's would be appropriate. Another commenter said that the USCG's and EPA's guidance on response resources were inappropriate because they were developed for industries regulated by those agencies. Some industry representatives suggested that operators should have the discretion to identify personnel and equipment to meet the tiered response for the worst case discharge. They oppose adopting the USCG's response planning standards, because they believe it would result in conflicting and confusing requirements.

Response

In the interim final rule, OPS referred to the USCG Navigation and Vessel Inspection Circular (NAVIC) No. 7–92, Appendix A, as a method an operator could use to determine the type and amount of response resources needed to respond to a worst case discharge. OPS also noted in the interim final rule that many pipeline operators deal with diverse spill risks and response considerations, which is reflected by the comments above. OPS does not believe it is necessary to specify the amount of response resources instead of allowing operators to determine and demonstrate sufficient response resources in their response plans.

The NAVIC included guidance on the tiers of response resources, defined environments in which response equipment must be capable of operating, and accounted for the physical effects of the environment on types of oil. The NAVIC set specific minimum amounts of equipment, and specified times of arrival at the scene of a worst case discharge for which an operator must plan.

Many of the concepts used in the NAVIC are in the USCG's rule for marine transportation-related facility response plans (33 CFR Part 154, Subpart F and Appendix C). Similarly, EPA adopted many of the planning concepts concerning the type and amount of response equipment from the NAVIC and from the USCG Negotiated Rulemaking Committee in its response planning regulation for non-transportation-related facilities (40 CFR Part 112, Appendix E).

OPS recognizes that some pipelines are in remote areas where relatively few response resources are available. If an operator is unable to meet the prescribed tier times in § 194.115(b), it should document why it cannot meet the prescribed tier times and propose alternative tier times. OPS allows an operator to propose alternative response tiers and response resources, methods and strategies to respond to the worst case discharge to the maximum extent practicable. OPS will assess the proposed alternative tier times according to available response contractors, mutual aid resources, feasible pre-staged containment and recovery equipment, and appropriate response techniques in the operator's response plan and corresponding information in the applicable ACP.

Many response plans for pipelines submitted to OPS are complex facility response plans that also address the USCG and the EPA response plan regulations. OPS notes that many of these complex facility response plans, including plans for pipelines only, are already using the USCG's and EPA's methods for planning response resources for a worst case discharge. OPS accepts the use of the assessment method specified in USCG's facility response planning regulations at Appendix C to 33 CFR part 154.

OPS encourages using USCG-classified oil spill response organizations (OSROs). An operator contracting with USCG-classified OSROs in order to have sufficient response resources to respond to the worst case discharge will not have to describe the response resources or the response equipment maintenance program of the USCG-Classified OSROs. Also, the operator will not be required to demonstrate how the equipment will be mobilized to meet the response tier times established in § 194.115, although the operator should take into account the time required for the USCG-Classified OSRO to respond to the spill from wherever the contractor is based.

OPS believes that many of the issues raised by the commenters are resolved through its iterative plan review process, drills, and responses to actual spills. Based upon this belief, OPS is not amending § 194.115 at this time. However, OPS may reexamine this issue.

Use of Spill Scenarios

OPS received comments endorsing the use of hypothetical spill scenarios to determine whether a response plan identifies sufficient response resources. One commenter noted that using scenarios is the best gauge of the capability to respond to a worst case discharge because a scenario gives an idea of what resources are available.

Another commenter suggested that scenarios would be helpful for assessing the ability to respond to a worst case discharge. Another stated that drafting multiple scenarios would be burdensome and would only make the plans larger. One commenter suggested that scenario-based analysis be used with the tiered approach. Two commenters stated that a scenario-based review is preferable to the tiered approach.

Response

OPS recognizes that other Federal and State agencies allow scenarios to be used. However, OPS finds the increased burden of mandatory scenario development in a response plan is not justified by any corresponding increase in response preparedness. OPS is not adopting a scenario-based approach.

Section 194.117, Training

OPS received several comments on the training requirements in § 194.117. Three commenters suggested revisions to § 194.117(a)(1) regarding how operators should train personnel to know their responsibilities under the plan. Three commenters noted that the training should be limited to personnel engaged in response or reporting. Two commenters noted that training should be related to each person's role under the response plan and one noted that only OSHA should have across-the-board training requirements. One commented that reporting personnel need only the items enumerated under § 194.117(a)(2) and did not need to know the specific information.

Two commenters requested that § 194.117(b)(1) be revised to require that records for personnel be maintained at a designated office of record for the

affected facilities, because this may not be the same as the operator's headquarters.

Another commenter noted that OPS should coordinate the training requirements with the USCG and the EPA to ensure required training performed for one agency will meet the training requirements for all agencies.

Response

OPS is not amending § 194.117. Following the publication of the IFR and the public meeting, the four Federal agencies responsible for implementing OPA 90 worked together to develop the Training Reference for Oil Spill Response (August 1994). Although this document is not a regulation, operators may review it along with specific agency requirements on training. This reference can be found on the USCG's Web page, *http://www.CoastGuard.mil,* and it is also available from the Government Printing Office, GPO stock number 050–12–00364–5. OPS believes the commenters concerns have been addressed through this document.

Training Credit

One commenter requested that training credit be allowed for responses.

Response

Under the PREP program, RAPS/OPS allows operators to take training credit for responses when the operator can demonstrate the specific training requirements under § 194.117, including individual responsibilities under the plan, were accomplished during the response and that appropriate records are maintained.

Section 194.119, Submission and Approval Procedures

Submission

Although not the subject of a specific comment OPS made minor clarifications to § 194.119 (a), notifying the operators that submission in electronic format is preferred; and to clarify § 194.119 (e), removing dates that were no longer necessary.

FOSC Role

Six comments were on the role of the FOSC in requesting and reviewing a facility response plan for a pipeline. Several commenters took exception to the implication that a FOSC could object to a OPS plan approval because authority to review and approve pipeline response plans was delegated to OPS. Two commenters were concerned about significant delays in plan approval in the event that a FOSC was reviewing a plan. A commenter endorsed the principle of a FOSC reviewing a response plan for a pipeline in the FOSC's area of responsibility, but said that final approval authority should remain with OPS. Two commenters stated that OPS should develop criteria for FOSC determinations of whether to request OPS require a plan submittal.

Response

OPS is committed to interagency cooperation and will continue to allow FOSCs to review response plans under § 194.119(f). OPS takes into consideration comments from a FOSC on response techniques, protecting fish, wildlife, and sensitive environments, and consistency with ACPs. However, OPS remains the approving authority for pipeline facility response plans. OPS determined that it is not necessary to develop criteria governing FOSC reviews of response plans. OPS believes that the requirements of Part 194 are sufficient to guide FOSCs in requesting a response plan be submitted or in reviewing plans. However, OPS made minor modification to §§ 194.119(d) and 194.119(f) to clarify OPS's authority.

Incident Command System for Complex Facilities

Three commenters supported using the National Response Team's ICP format at a facility that was required to prepare and submit a response plan to several Federal agencies. One commenter correctly noted that review and approval should remain with each Federal agency for the portion of the facility over which the agency has jurisdiction. Another commenter suggested that the three agencies involved in response plan review, EPA, OPS and the USCG, should develop an MOU under which only one agency would review and approve response plans for such ''complex'' facilities.

Response

OPS endorses the National Response Team's ICP as the preferred method of developing response plans (61 FR 28642; June 5, 1996). However, the ICP does not replace Federal agency requirements, redefine agency jurisdiction, or redefine or modify what constitutes a minimally adequate response plan. In addition, RSPA/OPA believes that it is appropriate for another Federal agency to review a response plan governing that portion of a facility over which the agency has expertise and jurisdiction.

Section 194.121, Response Plan Review and Update Procedures

OPS received several comments on § 194.121. OPS received four comments concerning the time allowed to revise a plan and submit the revised plan. The commenters stated that 30 days was insufficient time to revise a plan. One commenter suggested that 90 days was sufficient and three commenters suggested 120 days.

Another commenter noted that the lists of changes in operating conditions requiring resubmission are not equally significant. For example, the commenter stated that a change in the OSRO would be considered a substantial change and should require a more rapid revision of the plan. Another commenter suggested that operators should not be required to resubmit a plan because of a change in the qualified individual. Another commenter asked us to clarify whether the entire plan had to be resubmitted or only the affected portions. Another commenter suggested that § 194.121(b)(3) be changed to state that the plan must be resubmitted when a change in the type of oil transported affects the response resources.

Response

Under current regulation, each operator reviews its response plan at least every 5 years from the date of submission and modifies the plan to address new or different operating conditions or information included in the plan. OPS is revising § 194.121(a) to clarify operators are to resubmit the plans to OPS. For significant and substantial harm plans, the approval date is the date on the letter OPS approving the plan. For substantial harm facilities, operators must resubmit the plan to OPS for review five years after the most recent date of submission, because OPS does not issue approval letters to substantial harm facilities.

OPS believes that the concerns raised by these commenters is resolved through the iterative process of plan reviews. OPS requires that significant changes be submitted in accordance with § 194.121(b). An operator need not submit the entire plan if only portions of the plan have changed. If an operator requests an extension, OPS may grant an extension of up to 120 days for operators to submit changes in their plans. OPS notes that operators are required to immediately modify their plans in the event new or different operating conditions or information occur that would substantially affect implementing the response plan.

Appendix A

OPS is supplementing the plan preparation guidance in Appendix A by adding references to publications and materials as follows:

This appendix provides a recommended format for the

preparation and submission of the response plans required by 49 CFR Part 194. Operators are referenced to the most current version of the guidance documents listed below. Although these documents contain guidance to assist in preparing response plans, their use is not mandatory:

(1) The ''National Preparedness for Response Exercise Program (PREP) Guidelines,'' which can be found at the USCG's PREP Web page, *http://www.uscg.mil;*

(2) The ''National Response Team's Integrated Contingency Plan Guidance,'' which can be found at the National Response Center's Web site, *http://www.nrt.org;* and

(3) 33 CFR Part 154, Appendix C, ''Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans.''

The PREP guidelines were published in August of 2002. The Integrated Contingency Plan Guidance was published June 5, 1996, and corrected June 19, 1996.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This action is considered a significant regulatory action under section 3(f) of Executive Order 12866 (''Regulatory Planning and Review'') (58 FR 51735; Oct. 4, 1993) and DOT's regulatory policies and procedures (44 FR 11034; Feb. 26, 1979) because of substantial Congressional and public interest in preventing and mitigating oil spills. This rule was therefore forwarded to the Office of Management and Budget for review. While the technical amendments made by this final rule to the existing response planning regulations in 49 CFR part 194 are not considered to be significant and involve no new costs to regulated entities or the public, because part 194 was established by an interim rule containing only a preliminary regulatory impact analysis, a full up-to-date analysis of the economic impact of the response planning requirements was warranted and prepared in connection with this final rule adopting the interim rule. The Final Regulatory Evaluation is available in the docket. The following section summarizes the Final Regulatory Evaluation's findings with respect to the overall costs and benefits of the oil spill response planning regulations in part 194.

With regard to the costs associated with response planning, operators of onshore oil pipelines incur costs for developing and maintaining a response plan; maintaining the capability to respond to the worst case discharge in each response zone; and conducting training, drills, and exercises related to spill response. The cost analysis in the Final Regulatory Evaluation contains two separate estimates of compliance costs associated with DOT's rule: a retrospective assessment of costs incurred from 1993 through 2004 in response to the interim final rule; and a prospective assessment of the costs likely to be incurred from January 1, 2005 onward in response to the final rule. The costs associated with implementation of the interim final rule, on an annualized basis, were estimated to be $29.1 million. Looking forward, the analysis indicates that the costs associated with implementation of the final rule will be $28.2 million per year.

With respect to benefits, the response plan requirements are designed to reduce the magnitude and severity of spills, thereby reducing the environmental damages and potential human health impacts that spills may cause. The benefits analysis uses historical data on spills to estimate that the response plan requirements reduced the quantity of oil spilled by an average of approximately 806,000 gallons per year. The analysis values this reduction in the quantity of oil spilled in several ways. First, spills can cause a variety of ecological damages (*e.g.*, fish kills, bird kills) and may influence human use of natural resources (*e.g.*, recreational use). The benefits analysis incorporates information from past natural resource damage assessments to characterize the economic benefits associated with avoiding these types of damages. Second, a reduction in the quantity of oil spilled reduces the costs associated with spill cleanup. Finally, by helping to reduce the volume of oil released in the event of a spill, the response plan requirements reduce the economic losses associated with the value of the lost product. The quantitative annual benefits estimates developed for averted natural resource damages, cleanup costs, and product losses range from $10.4 million to $63.6 million, with a best estimate of about $37.0 million. Averted cleanup costs account for the largest share of the quantified benefits. These estimates do not incorporate several additional categories of benefits (reduced impacts on drinking water systems, reduced health risks, and reduced third party damages) that could not be readily quantified.

In assessing the net cost-effectiveness of the response plan requirements, the Final Regulatory Evaluation compared the estimated annual costs of the rule relative to the estimated annual reduction in the quantity of oil spilled (806,000 gallons per year), using a costs range of approximately $35 to $36 per gallon reduction in the quantity of oil released. Specifically, the net economic effect of the response plan requirements was gauged by comparing the present value of the retrospective and prospective costs to the present value of the retrospective and prospective benefits. The estimated benefits of the response plan requirements exceed the estimated costs in both the retrospective and prospective periods. The net benefits (*i.e.*, benefits minus costs) in the retrospective period total approximately $59 million, while net benefits in the prospective period are roughly $125 million. Considering both periods together, the estimated net benefit of the response planning requirements is approximately $184 million.

No additional costs are associated with the technical amendments made by this final rule to the existing response planning regulations. For additional detail on the costs, benefits, and other economic impacts of response planning, see the Final Regulatory Evaluation available in the docket.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act, RSPS/OPS must consider whether a rulemaking would have a significant economic impact on a substantial number of small entities. This final rule was developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') (67 FR 53461; Aug. 16, 2002) and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act and ensure that potential impacts of draft rules on small entities are properly considered.

This final rule adopts an interim rule as final and makes minor amendments to existing requirements for facility response plans for onshore oil pipelines. This rule does not expand the number of small entities subject to part 194. More detailed information on small business impacts can be found in Chapter 6 of the Final Regulatory Evaluation which is available for copying and review in the public docket for this final rule.

Based on the facts available which indicate the anticipated minimal impact of this rulemaking action, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking action will not have a significant economic impact

on a substantial number of small entities.

C. Executive Order 13132

This rule will not have substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. Therefore, in accordance with the Executive Order 13132 (''Federalism'') (64 FR 43255; Aug. 10, 1999), OPS has determined that the action does not have sufficient Federalism implications to warrant consultation with the States.

D. Executive Order 13175

This rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'') (63 FR 27655; Nov. 9, 2000). Because this rule will not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

E. Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532–1538). It does not result in costs of $120,700,000 or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

The interim final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163; May 22, 1995) (PRA). At the time the interim rule was issued, pursuant to 44 U.S.C. 3507(d), DOT submitted a copy of its initial PRA analysis to OMB. Every three years OPS resubmits its PRA analysis of this collection to OMB for review. The OMB control number is 2137–0589. As part of developing this final rule, OPS examined its earlier PRA analyses to assess the accuracy of the earlier estimates. Based on improved data collection, OPS revised its burden estimates. The increased burden estimates, however, reflect an adjustment in producing the estimates rather than a change in the spill response planning requirements.

Therefore, this final rule adds no additional paperwork requirements to those imposed by the interim final rule. Below is a summary of the PRA analysis. The complete PRA analysis can be found in Chapter 7 of the Final Regulatory Evaluation which is available for copying and review in the public docket for this final rule.

Title: Response Plans for Onshore Oil Pipelines.

OMB Number: 2137–0589.

Type of Request: Renewal of an existing information collection.

Respondents: Oil pipeline operators.

Estimated Number of Respondents: 367.

Estimated Total Annual Burden on Respondents: 50,186 hours.

Comments concerning this information collection should include the docket number of this rule. They should be sent within 30 days of the publication of this notice directly to: Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation. Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information 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 the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

According to the Paperwork Reduction Act, no persons are required to respond to a collection of information unless a valid OMB control number is displayed.

G. National Environmental Policy Act

We analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and determined that this action will not significantly affect the quality of the human environment. An Environmental Assessment (EA) is in the docket. Notice of the availability of this EA was published in the **Federal Register** on August 30, 1999 (64 FR 47228).

OPS received only one comment on the EA. It addressed issues specific to the Trans-Alaska Pipeline System (TAPS) that were outside the scope of the EA. OPS made a Finding of No Significant Impact based on the EA published in the **Federal Register** on October 26, 1999 (64 FR 57694).

Because this final rule makes only administrative and clarification changes to the response planning regulations, this final rule will not have a significant impact on the environment. OPS has prepared a Finding of No Significant Impact and placed it in the public docket.

H. Non-Petroleum Oils

The Edible Oil Regulatory Reform Act (33 U.S.C. 2720) requires that regulations establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease under any Federal law must differentiate between petroleum and non-petroleum oils. This rule does not differentiate between petroleum oils and non-petroleum oils because OPS is not aware of any onshore transportation-related pipelines transporting non-petroleum oils. Should OPS learn of such pipelines, OPS will amend the rule to differentiate between petroleum and non-petroleum oils.

List of Subjects in 49 CFR Part 194

Environmental protection, Hazardous materials transportation, Oil pollution, Petroleum, Pipeline safety, Pipelines, Reporting and recordkeeping requirements, Transportation, Water pollution control.

n Accordingly, the interim rule amending 49 CFR part 194 which was published at 58 FR 244 on January 5, 1993, is adopted as a final rule with the following amendments:

PART 194—RESPONSE PLANS FOR ONSHORE OIL PIPELINES

n 1. The authority citation for part 194 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

n 2. Amend § 194.5 by removing the definitions of *Coastal zone, Inland area, Inland zone,* and *Response area* and revising the definition of *Adverse weather* to read as follows:

§ 194.5 Definitions.

Adverse weather means the weather conditions that the operator will consider when identifying response systems and equipment to be deployed in accordance with a response plan. Factors to consider include ice conditions, temperature ranges, weather-related visibility, significant wave height as specified in 33 CFR Part 154, Appendix C, Table 1, and currents within the areas in which those systems or equipment are intended to function.

* * * * *

n 3. Revise § 194.7 to read as follows:

§ 194.7 Operating restrictions and interim operating authorization.

(a) An operator of a pipeline for which a response plan is required under § 194.101, may not handle, store, or transport oil in that pipeline unless the operator has submitted a response plan meeting the requirements of this part.

(b) An operator must operate its onshore pipeline facilities in accordance with the applicable response plan.

(c) The operator of a pipeline line section described in § 194.103(c), may continue to operate the pipeline for two years after the date of submission of a response plan, pending approval or disapproval of that plan, only if the operator has submitted the certification required by § 194.119(e).

n 4. Amend § 194.101 by revising paragraph (a) to read as follows:

§ 194.101 Operators required to submit plans.

(a) Except as provided in paragraph (b) of this section, unless OPS grants a request from an Federal On-Scene Coordinator (FOSC) to require an operator of a pipeline in paragraph (b) to submit a response plan, each operator of an onshore pipeline facility shall prepare and submit a response plan to PHMSA as provided in § 194.119. A pipeline which does not meet the criteria for significant and substantial harm as defined in § 194.103(c) and is not eligible for an exception under § 194.101(b), can be expected to cause substantial harm. Operators of substantial harm pipeline facilities must prepare and submit plans to PHMSA for review.

* * * * *

n 5. Amend § 194.105 by adding a new paragraph (b)(4) and a table to read as follows:

§ 194.105 Worst case discharge.

* * * * *

(b) * * *

(4) Operators may claim prevention credits for breakout tank secondary containment and other specific spill prevention measures as follows:

Prevention measure	Standard	Credit (percent)
Secondary containment >100%	NFPA 30	50
Built/repaired to API standards	API RP 620/650/653	10
Overfill protection standards	API RP 2350	10
Testing/cathodic protection	API RP 650/651/653	5
Maximum allowable credit		75

n 6. Revise § 194.107 to read as follows:

§ 194.107 General response plan requirements.

(a) Each response plan must include procedures and a list of resources for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge. The ''substantial threat'' term is equivalent to abnormal operations outlined in 49 CFR 195.402(d). To comply with this requirement, an operator can incorporate by reference into the response plan the appropriate procedures from its manual for operations, maintenance, and emergencies, which is prepared in compliance with 49 CFR 195.402.

(b) An operator must certify in the response plan that it reviewed the NCP and each applicable ACP and that its response plan is consistent with the NCP and each applicable ACP as follows:

(1) As a minimum to be consistent with the NCP a facility response plan must:

(i) Demonstrate an operator's clear understanding of the function of the Federal response structure, including procedures to notify the National Response Center reflecting the relationship between the operator's response organization's role and the Federal On Scene Coordinator's role in pollution response;

(ii) Establish provisions to ensure the protection of safety at the response site; and

(iii) Identify the procedures to obtain any required Federal and State permissions for using alternative response strategies such as in-situ burning and dispersants as provided for in the applicable ACPs; and

(2) As a minimum, to be consistent with the applicable ACP the plan must:

(i) Address the removal of a worst case discharge and the mitigation or prevention of a substantial threat of a worst case discharge;

(ii) Identify environmentally and economically sensitive areas;

(iii) Describe the responsibilities of the operator and of Federal, State and local agencies in removing a discharge and in mitigating or preventing a substantial threat of a discharge; and

(iv) Establish the procedures for obtaining an expedited decision on use of dispersants or other chemicals.

(c) Each response plan must include:

(1) A core plan consisting of—

(i) An information summary as required in § 194.113,

(ii) Immediate notification procedures,

(iii) Spill detection and mitigation procedures,

(iv) The name, address, and telephone number of the oil spill response organization, if appropriate,

(v) Response activities and response resources,

(vi) Names and telephone numbers of Federal, State and local agencies which the operator expects to have pollution control responsibilities or support,

(vii) Training procedures,

(viii) Equipment testing,

(ix) Drill program—an operator will satisfy the requirement for a drill program by following the National Preparedness for Response Exercise Program (PREP) guidelines. An operator choosing not to follow PREP guidelines must have a drill program that is equivalent to PREP. The operator must describe the drill program in the response plan and OPS will determine if the program is equivalent to PREP.

(x) Plan review and update procedures;

(2) An appendix for each response zone that includes the information required in paragraph (c)(1)(i)–(ix) of this section and the worst case discharge calculations that are specific to that response zone. An operator submitting a response plan for a single response zone does not need to have a core plan and a response zone appendix. The operator of a single response zone onshore pipeline shall have a single summary in the plan that contains the required information in § 194.113.7; and

(3) A description of the operator's response management system including the functional areas of finance, logistics, operations, planning, and command. The plan must demonstrate that the operator's response management system uses common terminology and has a manageable span of control, a clearly defined chain of command, and sufficient trained personnel to fill each position.

n 7. Amend § 194.109 by revising paragraph (b)(2) to read as follows:

§ 194.109 Submission of State response plans.

* * * * *

(b) * * *

(2) List the names or titles and 24-hour telephone numbers of the qualified individual(s) and at least one alternate qualified individual(s); and

* * * * *

n 8. Amend § 194.111 by revising paragraph (a) to read as follows:

§ 194.111 Response plan retention.

(a) Each operator shall maintain relevant portions of its response plan at the operator's headquarters and at other locations from which response activities may be conducted, for example, in field offices, supervisors' vehicles, or spill response trailers.

* * * * *

n 9. Amend § 194.113 by revising paragraph (b)(2) to read as follows:

§ 194.113 Information summary.

* * * * *

(b) * * *

(2) The names or titles and 24-hour telephone numbers of the qualified individual(s) and at least one alternate qualified individual(s);

* * * * *

n 10. Amend § 194.119 by revising paragraphs (a), (d), (e) and (f) to read as follows:

§ 194.119 Submission and approval procedures.

(a) Each operator shall submit two copies of the response plan required by this part. Copies of the response plan shall be submitted to: Pipeline Response Plans Officer, Pipeline and Hazadous Material Safety Administraion, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Note: Submission of plans in electronic format is preferred.

* * * * *

(d) For response zones of pipelines described in § 194.103(c) OPS will approve the response plan if OPS determines that the response plan meets all requirements of this part. OPS may consult with the U.S. Environmental Protection Agency (EPA) or the U.S. Coast Guard (USCG) if a Federal on-scene coordinator (FOSC) has concerns about the operator's ability to respond to a worst case discharge.

(e) If OPS has not approved a response plan for a pipeline described in § 194.103(c), the operator may submit a certification to OPS that the operator has obtained, through contract or other approved means, the necessary personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge. The certificate must be signed by the qualified individual or an appropriate corporate officer.

(f) If OPS receives a request from a FOSC to review a response plan, OPS may require an operator to give a copy of the response plan to the FOSC. OPS may consider FOSC comments on response techniques, protecting fish, wildlife and sensitive environments, and on consistency with the ACP. OPS remains the approving authority for the response plan.

n 11. Amend § 194.121 by revising paragraph (a) to read as follows:

§ 194.121 Response plan review and update procedures.

(a) Each operator shall update its response plan to address new or different operating conditions or information. In addition, each operator shall review its response plan in full at least every 5 years from the date of the last submission or the last approval as follows:

(1) For substantial harm plans, an operator shall resubmit its response plan to OPS every 5 years from the last submission date.

(2) For significant and substantial harm plans, an operator shall resubmit every 5 years from the last approval date.

* * * * *

n 12. Amend Appendix A to Part 194 by revising the introductory paragraph to read as follows:

Appendix A to Part 194—Guidelines for the Preparation of Response Plans

This appendix provides a recommended format for the preparation and submission of the response plans required by 49 CFR Part 194. Operators are referenced to the most current version of the guidance documents listed below. Although these documents contain guidance to assist in preparing response plans, their use is not mandatory:

(1) The ''National Preparedness for Response Exercise Program (PREP) Guidelines'' (PREP), which can be found using the search function on the USCG's PREP Web page, *http://www.uscg.mil*;

(2) The National Response Team's ''Integrated Contingency Plan Guidance,'' which can be found using the search function at the National Response Center's Web site, *http://www.nrt.org and*;

(3) 33 CFR Part 154, Appendix C, ''Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans.''

* * * * *

Issued in Washington, DC, on February 14, 2005.

Samuel G. Bonasso,

Deputy Administrator.

[FR Doc. 05–3257 Filed 2–22–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Hunting and Fishing

CFR Correction

n In Title 50 of the Code of Federal Regulations, parts 18 to 199, revised as of October 1, 2004, in part 32, make the following corrections:

n 1. In § 32.24, on page 211, remove the first heading for ''San Pablo Bay National Wildlife Refuge''.

n 2. In § 32.28, on page 219, under ''St. Vincent National Wildlife Refuge'', the first paragraph *''C. Big Game Hunting''* is removed.

n 3. In § 32.29, on page 222, under ''Blackbeard Island National Wildlife Refuge'' paragraph D is added after paragraph C.17, and on page 226, under ''Savannah National Wildlife Refuge'' paragraph D is added after paragraph C.10, to read as follows:

§ 32.29 Georgia.

* * * * *

Blackbeard Island National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Anglers may fish in freshwater year-round from sunrise to sunset, except during managed deer hunts.

2. Only nonmotorized boats and boats with electric motors are permitted.

3. The use of live minnows as bait is not permitted.

4. Boats may not be left on the refuge overnight.

5. Anglers may bank fish into estuarine waters daily from sunrise to sunset only.

* * * * *

Savannah National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. Anglers may fish in refuge impoundments and canals from March 1 through November 30 annually.

2. Anglers may fish in Kingfisher Pond year round.

3. We allow fishing from sunrise to sunset.

4. Anglers may bank fish year round in the canals adjacent to the wildlife drive.

5. Boats may not be left on the refuge overnight.

6. Anglers may only use non-motorized boats and boats with electric motors within impounded waters.

* * * * *

n 4. In § 32.34, on page 236, under ''Neal Smith National Wildlife Refuge'' in the second column, the second paragraph B.1 through 3 and paragraph C is removed.

n 5. In § 32.40, on page 270, the entry for ''Great Meadows National Wildlife Refuge'' is added after the introductory paragraph, and on page 272, under ''Parker River National Wildlife Refuge'' paragraph D is added after paragraph C.11 to read as follows:

§ 32.40 Massachusetts.

* * * * *

Great Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted in designated areas of the refuge subject to the following condition:

1. Fishing is permitted along the main channel of the Sudbury River, Concord River and along designated banks of Heard Pond with the following exception: Fishing is not permitted within refuge impoundments.

2. Only foot access is permitted.

* * * * *

Parker River National Wildlife Refuge

* * * * *

D. Sport Fishing. Saltwater fishing is permitted on designated areas of the refuge subject to the following conditions:

1. We allow saltwater fishing on the ocean beach and the surrounding waters of the Broad Sound.

2. A permit is required for night fishing and for the use of over-the-sand surf-fishing vehicles.

* * * * *

n 6. In § 32.46, on page 297, under ''North Platte National Wildlife Refuge'' the second paragraph B.''Upland Game Hunting. [Reserved]'' is removed.

n 7. In § 32.66, on page 362, under ''Rappahannock River Valley National Wildlife Refuge'' after paragraph C.10 add text to paragraph D to read as follows:

§ 32.66 Virginia.

* * * * *

Rappahannock River Valley National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow fishing on designated areas of Wilna Pond in Richmond County subject to the following conditions:

1. As we implement the new fishing program at Wilna Pond, we intend to be open on a daily basis, legal sunrise to legal sunset. If unexpected law enforcement issues arise, we may restrict hours of access for fishing.

2. From March 15 through June 30, we allow fishing from the Wilna Pond pier only (no boat or bank fishing).

3. During the period when we open the Wilna Tract for deer hunting, we will close it to all other uses, including fishing.

4. We prohibit fishing by any means other than by use of one or more attended poles with hook and line attached.

5. We prohibit the use of lead fishing tackle.

6. We require catch and release fishing only for largemouth bass. Anglers may take other finfish species in accordance with State regulations.

7. We prohibit the take of any reptile, amphibian, or invertebrate species for use as bait or for any other purpose.

8. We prohibit the use of live minnows as bait.

9. We prohibit use of boats propelled by gasoline motors, sail, or mechanically operated paddle wheel. We only permit car-top boats; and we prohibit trailers.

10. Prescheduled environmental education field trips will have priority over other uses, including sport fishing, on the Wilna Pond pier at all times.

[FR Doc. 05–55501 Filed 2–22–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041202338–4338–01; I.D. 021605A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the interim 2005 total allowable catch (TAC) of Atka mackerel specified for the Central Aleutian District.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 17, 2005, until superseded by the notice of final 2005 and 2006 harvest specifications of groundfish for the BSAI, which will be published in the **Federal Register**.

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

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

The interim 2005 TAC of Atka mackerel in the Central Aleutian District of the BSAI is 13,218 metric tons (mt) as established by the interim 2005 harvest specifications for groundfish of the BSAI (69 FR 76780, December 23, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2005 TAC specified for Atka mackerel in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 13,000 mt, and is setting aside the remaining 218 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the fisheries under the interim 2005 TAC of Atka mackerel specified for the Central Aleutian District of the BSAI.

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

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

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

Dated: February 16, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–3440 Filed 2–17–05; 3:07 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 35
Wednesday, February 23, 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 HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–006]

RIN 1625–AA09

Drawbridge Operation Regulations; Mitchell River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the Chatham Highway Bridge, mile 0.2, across the Mitchell River at Chatham, Massachusetts. This proposed change to the drawbridge operation regulations would require from 4 p.m. to 5 p.m. that only one hour notice be given for a bridge opening instead of the currently required 12 hours notice from May 1 through October 31. This rulemaking would also change the on-call contact information. This action is expected to better meet the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before April 25, 2005.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, 408 Atlantic Avenue, Boston, Massachusetts 02110, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–05–006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background

The Chatham Highway Bridge has a vertical clearance in the closed position of 8 feet at mean high water and 12 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.607.

The Town of Chatham, the owner of the bridge, asked the Coast Guard to change the drawbridge operation regulations for the Chatham Highway Bridge to extend the one-hour advance notice requirement to include the 4 p.m. to 5 p.m. hour, May 1 through October 31. The existing regulations require the bridge to open on signal after a one-hour advance notice is given between 8 a.m. and 4 p.m. This proposed rule would extend that one-hour advance notice requirement to include the 4 p.m. to 5 p.m. time during May through October.

Also, the on-call contact person would be changed from the duty officer at the Chatham Police Department to the Chatham Harbormaster at the Chatham Harbormasters Department.

Discussion of Proposal

This proposed change would revise 33 CFR 117.607, which lists the operating regulations for the Chatham Highway Bridge. This proposed change would require the bridge to open on signal after a one-hour advance notice is given, May 1 through October 31, between 8 a.m. and 5 p.m., by calling the Chatham Harbormasters Department.

The draw would continue to open from 5 p.m. to 8 a.m., May 1 through October 31, after a 12-hour advance notice is given and all day from November 1 through April 30, after a 24-hour advance notice is given.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the bridge will open after a one-hour advance notice from 8 a.m. to 5 p.m. for vessel traffic from May 1 through October 31.

Small Entities

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

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a

significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will open an additional hour each day for vessel traffic from May 1 through October 31.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Technical Standards

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1d, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.607 is revised to read as follows:

§ 117.607 Mitchell River.

The Chatham Highway Bridge, at mile 0.2, at Chatham, Massachusetts, shall operate as follows:

(a) From May 1 through October 31, the draw shall open on signal from 8 a.m. to 5 p.m., if at least one hour notice is given and from 5 p.m. to 8 a.m. the draw shall open on signal if at least 12 hours notice is given by calling the Chatham Harbormasters Department.

(b) From November 1 through April 30, the draw shall open on signal if at least a 24-hour advance notice is given by calling the Chatham Harbormasters Department.

Dated: February 2, 2005.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 05–3413 Filed 2–22–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7876–1]

RIN 2060–AM50

Protection of Stratospheric Ozone: Supplemental Proposal for the Allocation of Essential Use Allowances for Calendar Year 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This action supplements EPA's December 22, 2004, notice of proposed rulemaking (69 FR 76655). In proposing essential use allocations for calendar year 2005, EPA published an incorrect number for the quantity of controlled substances to be allocated to one company, Armstrong Pharmaceuticals. This supplemental proposed rule is being issued to correct the error by increasing Armstrong's allocation to equal the amount determined by the U.S. Food and Drug Administration (FDA) to be medically necessary in 2005. As a result of this action, the total allocations to all companies would be raised from 1524.58 metric tons, as originally proposed, to 1766.48 metric tons.

DATES: Written comments on this proposed rule must be received by the EPA Docket on or before March 25, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0063, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Docket ID No. OAR–2004–0063.
- Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0063. Deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Air Docket ID No. OAR–2004–0063. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. For instructions on how to submit CBI, see ''How do I submit confidential business information to EPA?'' under **SUPPLEMENTARY INFORMATION**.

The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet.

If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, namely CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for Docket ID No. OAR–2004–0063 is (202) 566–1742.

Materials related to previous EPA actions on the essential use program are contained in EPA Air Docket No. A–93–39. Docket A–93–39 may be reviewed at the Public Reading Room.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Essential Use Program Manager, by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; by courier service or overnight express: 1301 L Street, NW., Washington, DC 20005, by telephone: 202–343–9712; or by e-mail: *monroe.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Is the Purpose of This Supplementary NPRM?

The purpose of today's notice is to correct an error in the proposed rule that EPA published in the **Federal Register** of December 22, 2004 (69 FR 76655). That action proposed to allocate production and import allowances to Armstrong Pharmaceuticals for a quantity of controlled substances in the amount of 29 metric tons. The Food and Drug Administration (FDA), which determines the amount of controlled substances that are medically necessary in each control period, notified EPA via letter after the proposed rule appeared in the **Federal Register** that the proposed allocation for Armstrong Pharmaceuticals was incorrect (this letter is available in Air Docket OAR–2004–0063). The proposed amount should have been 270.90 metric tons.

EPA is therefore proposing to allocate to Armstrong Pharmaceuticals an additional quantity of production and import allowances in the amount of 241.90 metric tons, which represents the difference between the amount that FDA determined was necessary (270.90 metric tons) and the amount already proposed by EPA (29 metric tons). EPA is not proposing to alter any other company's allocation, as proposed on December 22, 2004, in today's action.

As a result of the previously published NPRM and today's supplemental NPRM, the total amount proposed to be allocated to Armstrong Pharmaceuticals for calendar year 2005 is 270.90 metric tons, and consequently the total amount allocated to all companies (including Armstrong) would be increased from 1,524.58 metric tons to 1,766.48 metric tons. The latter amount is less than the total amount, 1,902 metric tons, that was authorized to the United States for 2005 by the Parties to the Montreal Protocol.

The reader is referred to the December 22, 2004, NPRM for background information about the essential use program and the process by which EPA and FDA determined the proposed allocations for 2005.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

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 instruction; 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. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 1.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule provides an otherwise unavailable benefit to the company, Armstrong Pharmaceuticals, that is receiving essential use allowances by creating an exemption to the regulatory phaseout of chlorofluorocarbons. We have therefore concluded that today's proposed rule will relieve regulatory burden for Armstrong Pharmaceuticals. We continue to be interested in the potential impact of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides exemptions from the 1996 phase out of

class I ODSs. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because this rule merely allocates essential use exemptions to entities as an exemption to the ban on production and import of class I ODSs.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule affects only one company that requested essential use allowances. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule affects only one company that requested essential use allowances. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency 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 the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements the phaseout schedule and exemptions established by Congress in Title VI of the Clean Air Act.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule affects only one company that requested essential use allowances.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Environmental protection, Imports, Methyl Chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: February 15, 2005.

Stephen L. Johnson,

Acting Administrator.

40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601,7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.8 is amended by revising the table in paragraph (a) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

(a) * * *

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2005

Company	Chemical	Quantity (metric tons)
Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	270.90
Aventis Pharmaceutical Products	CFC–11 or CFC–12 or CFC–114	57
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	480
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	816
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	69.18
Wyeth	CFC–11 or CFC–12 or CFC–114	73.40

* * * * *

[FR Doc. 05–3451 Filed 2–22–05; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7875–6]

Mississippi: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Mississippi has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Mississippi for RCRA Clusters IV through X. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by March 25, 2005.

ADDRESSES: Submit your comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- E-mail: *middlebrooks.gail@epa.gov*.
- Fax: (404) 562–8439 (prior to faxing, please notify the EPA contact listed below).
- Mail: Send written comments to Gail Middlebrooks at the address listed below.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*, or e-mail. The Federal *regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. 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.

You can view and copy Mississippi's applications from 8 a.m. to 4:30 p.m. at the following addresses: Mississippi Department of Environmental Quality, Hazardous Waste Division, 101 W. Capital, Suite 100, Jackson, Mississippi 39201; and EPA, Region 4, Library, 9th Floor, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8190.

FOR FURTHER INFORMATION CONTACT: Gail Middlebrooks, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8494.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: February 2, 2005.

A. Stanley Meilburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–3364 Filed 2–22–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Subtitle A

[Docket No. OST–2005–20434]

Driver's Licenses and Personal Identification Cards

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of intent to form a negotiated rulemaking advisory committee.

SUMMARY: Pursuant to the portion of the Intelligence Reform and Terrorism Prevention Act of 2004 known as the 9/11 Commission Implementation Act of 2004, the Office of the Secretary, DOT, is establishing a committee to develop, through negotiated rulemaking procedures, recommendations for minimum standards to tighten the security for driver's licenses and personal identification cards issued by States, in order for these documents to qualify for use by Federal agencies for identification purposes. The committee will consist of persons who represent the interests affected by the proposed rule, *i.e.,* State offices that issue driver's licenses or personal identification cards, elected State officials, the Departments of Transportation and Homeland Security, and other interested parties. The purpose of this document is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the committee.

DATES: You should submit your comments or applications for membership or nominations for membership on the negotiated rulemaking committee early enough to ensure that the Department's Docket Management System (DMS) receives them not later than March 25, 2005. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You should mention the docket number of this document in your comments or application/nomination for membership and submit them in writing to: Docket Management System (DMS), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following Web address: *http://dms.dot.gov/submit/*.

You may call the Docket at 202–366–9324, and visit it from 10 a.m. to 5 p.m., Monday through Friday. Interested persons may view docketed materials on the Internet at any time. Instructions for doing so are found at the end of this notice.

You may read the comments received by DMS at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also review all documents in the docket via the internet. To read docket materials on the internet, take the following steps:

1. Go to the DMS Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on ''search.''
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were OST–2005–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
4. On the next page, which contains docket summary information for the

docket you selected, click on the desired comments. You may download the comments. The comments are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, at 202–366–9310 (*bob.ashby@dot.gov*), or Steve Wood, Assistant Chief Counsel for Vehicle Safety Standards and Harmonization, Office of the Chief Counsel, National Highway Traffic Safety Administration, 202–366–2992 (*steve.wood@nhtsa.dot.gov*) Their mailing addresses are at the Department of Transportation, 400 7th Street, SW., Washington, DC 20590, at rooms 10424 and 5219, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. (Public Law No. 108–458). Title VII of that Act is known as the 9/11 Commission Implementation Act of 2004 (the 9/11 Act). Subtitle B of the 9/11 Act addresses terrorist travel and effective screening. Among other things, subtitle B mandates the issuance of minimum standards for Federal acceptance of birth certificates (section 7211), and driver's licenses and personal identification cards (section 7212). It also establishes requirements for enhancing the security of social security cards (section 7213). This notice concerns section 7212.

A bill currently under consideration in Congress (H.R. 418), if enacted and signed into law as passed by the House, would terminate the Department's negotiated rulemaking. The Administration has endorsed this bill, which would repeal section 7212 which is the basis for the Department's rulemaking. Until and unless such legislation is enacted, however, the Department is taking the steps necessary to meet the existing statutory deadline. This notice describes the procedure that we propose to use in implementing section 7212, as long as it remains in effect.

II. Statutory Mandate for Minimum Standards on Driver's Licenses and Personal Identification Cards

Section 7212 of the 9/11 Act requires the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to establish, by regulation, minimum standards for driver's licenses or personal identification cards issued by a State in order to qualify for use by Federal agencies for identification purposes.

This provision was enacted in response to the following recommendation in the 9/11 Commission report:

> Recommendation: Secure identification should begin in the United States. The Federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.[1]

In making that recommendation, the Commission noted:

> All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities.[2]

A. Substance of the Standards

Section 7212(b)(2) of the 9/11 Act requires that the standards to be established by the Secretary of Transportation include—

(A) standards for documentation required as proof of identity of an applicant for a driver's license or personal identification card;

(B) standards for the verifiability of documents used to obtain a driver's license or personal identification card;

(C) standards for the processing of applications for driver's licenses and personal identification cards to prevent fraud;

(D) standards for information to be included on each driver's license or personal identification card, including—

(i) the person's full legal name;

(ii) the person's date of birth;

(iii) the person's gender;

(iv) the person's driver's license or personal identification card number;

(v) a digital photograph of the person;

(vi) the person's address of principal residence; and

(vii) the person's signature; [3]

(E) standards for common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements;

(F) security standards to ensure that driver's licenses and personal identification cards are—

(i) resistant to tampering, alteration, or counterfeiting; and

(ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier; and

(G) a requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised.

Section 7212(b)(3) requires further that the standards—

(A) shall facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual;

(B) may not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State;

(C) may not require a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State;

(D) may not require a single design to which driver's licenses or personal identification cards issued by all States must conform; and

(E) shall include procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards.

B. Process for Developing Recommendations for Proposed Standards

The 9/11 Act requires that before publishing proposed minimum

[1] 9/11 Commission Report, page 390.

[2] Ibid.

[3] Section 7214 of the Act provides that no State or subdivision thereof may ''display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license, motor vehicle registration, or personal identification card (as defined in section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004), or include, on any such license, registration, or personal identification card, a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof).''

standards, the Secretary of Transportation must establish a negotiated rulemaking process pursuant to 5 U.S.C. 561 *et seq.*,[4] and receive such recommendations regarding a proposed as the regulatory negotiation committee may adopt. The committee must include representatives from—

(i) among State offices that issue driver's licenses or personal identification cards;

(ii) among State elected officials;

(iii) the Department of Homeland Security; and

(iv) among interested parties.[5]

C. Schedule for Submitting Recommendations and Establishing the Standards

The recommendations of the negotiated rulemaking committee must be submitted to the Secretary of Transportation not later than 9 months after the date of enactment, *i.e.*, by September 17, 2005.[6] The Secretary must issue a final rule establishing the standards not later than 18 months after the date of enactment, *i.e.*, by June 17, 2006.[7]

D. Implementation of the Standards

Section 7212(b)(1)(C) provides that each State must certify to the Secretary of Transportation that the State is in compliance with the requirements of this section. The certifications are to be made at such intervals and in such a manner as the Secretary of Transportation may prescribe by regulation.

Further, Section 7212(b)(1)(A) bars all Federal agencies from accepting, for any official purpose, a driver's license or personal identification card that is newly issued by a State more than 2 years after the issuance of the minimum standards (*i.e.*, by June 17, 2008) unless the driver's license or personal identification card conforms to those standards.[8] As to all driver's licenses and personal identification cards, regardless of when they were issued, the Secretary of Transportation, in consultation with the Secretary of Homeland Security, is required by Section 7212(b)(1)(B) to set a date after which all Federal agencies are barred from accepting any driver's license or personal identification card for any official purpose unless such driver's license or personal identification card conforms to the minimum standards.

III. Negotiated Rulemaking

As required by Section 7212 (b)(4)(C), the Office of the Secretary will conduct the mandated negotiated rulemaking in accordance with the Negotiated Rulemaking Act of 1990, Public Law 101–648 (NRA) (5 U.S.C. 561, *et seq.*). The NRA establishes a framework for the conduct of a negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Pursuant to Section 7212 and the NRA, OST will form an advisory committee consisting of representatives of the affected interests for the purpose of reaching consensus, if possible, on the proposed rule.

A. The Concept of Negotiated Rulemaking

Usually, DOT develops a rulemaking proposal using its own staff and consultant resources. The concerns of affected parties are made known through means such as various informal contacts and advance notices of proposed rulemaking published in the **Federal Register**. After the notice of proposed rulemaking is published for comment, affected parties may submit arguments and data defining and supporting their positions with regard to the issues raised in the proposed rule. All comments from affected parties are directed to the Department's docket for the rulemaking. In general, there is limited communication among parties representing different interests. Many times, effective regulations have resulted from such a process.

However, as Congress noted in the NRA, such regulatory development procedures may ''discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *'' (Sec. 2(2) of Pub. L. No. 101–648). Congress also stated ''adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.'' (Sec. 2(3) of Pub. L. No. 101–648).

Using negotiated rulemaking to develop the proposed rule is fundamentally different. Negotiated rulemaking is a process in which a proposed rule is developed by a committee composed of representatives of all those interests that will be significantly affected by the rule. Decisions are made by some form of consensus, which generally requires a measure of concurrence among the interests represented.[9] An agency desiring to initiate the process does so by carefully identifying all interests potentially affected by the rulemaking under consideration. To help in this identification process, the agency publishes a notice, such as this one, which identifies a preliminary list of interests and requests public comment on that list. Following receipt of the comments, the agency establishes an advisory committee representing these various interests to negotiate a consensus on the terms of a proposed rule. The committee is chartered under the Federal Advisory Committee Act (FACA; 5 U.S.C. App. 2). Representation on the committee may be direct, that is, each member represents a specific interest, or may be indirect, through coalitions of parties formed for this purpose. The establishing agency has a member of the committee representing the Federal government's own set of interests.[10] A facilitator or mediator can assist the negotiated rulemaking advisory committee by facilitating the negotiation process. The role of this mediator, or facilitator, is to apply proven consensus building techniques to the advisory committee setting.

Once a regulatory negotiation advisory committee reaches consensus on the provisions of a proposed rule, the agency, consistent with its legal obligations, uses this consensus as the basis of its proposed rule and publishes it in the **Federal Register**. This provides the required public notice under the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*) and allows for a public comment period. Under the APA, the public retains the right to comment. The Department anticipates, however, that the pre-proposal consensus agreed upon by this committee will effectively address virtually all major issues prior to publication of a proposed rulemaking.

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[4] Section 7212(b)(4)(A).

[5] Section 7212(b)(4)(B).

[6] Section 7212(b)(4)(C)(i).

[7] Section 7212(b)(2). See also Section 7212(b)(4)(C)(ii).

[8] Section 7212(d) provides that the Secretary may extend this date ''for up to 2 years for driver's licenses issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under * * * [section 7212(b)] * * * but was unable to do so.''

[9] The Negotiated Rulemaking Act defines ''consensus'' as ''unanimous concurrence among the interests represented on a negotiated rulemaking committee * * * unless such committee (A) agrees to define such term to mean a general but not unanimous concurrence; or (B) agrees upon another specified definition.'' 5 U.S.C. 562(2).

[10] In this regulatory negotiation, both the Departments of Transportation and Homeland Security are required by statute to represent the Federal government's interests.

B. The Department of Transportation's Commitment

In initiating this regulatory negotiation process, the Department plans to provide adequate resources to ensure timely and successful completion of the process. This includes making the process a priority activity for all representatives, components, officials, and personnel of the Department who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. The Department will provide administrative support for the process and will take steps to ensure that the negotiated rulemaking committee has the appropriate resources it requires to complete its work in a timely fashion. These include the provision or procurement of such support services as properly equipped space adequate for public meetings and caucuses; logistical support; word processing and distribution of background information; the services of a convenor/facilitator; and such additional research and other technical assistance as may be necessary.

To the extent possible, consistent with its legal obligations, the Department currently plans to use any consensus arising from the regulatory negotiation committee as the basis for the proposed minimum standards to be published for public notice and comment.[11]

C. Negotiating Consensus

As discussed above, the negotiated rulemaking process is fundamentally different from the usual development process for developing a proposed rule. Negotiation allows interested and affected parties to discuss possible approaches to various issues rather than simply being asked in a regular notice and comment rulemaking proceeding to respond to details on a proposal developed and issued by an agency. The negotiation process involves a mutual education of the parties by each other on the practical concerns about the impact of various approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it up to the agency to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus. Thus, no one interest or group of interests is able to control the process. Under the NRA as noted above, ''consensus'' usually means the unanimous concurrence among interests represented on a negotiated rulemaking committee, though a different definition may be employed in some cases. In addition, experience has demonstrated that using a professional mediator to facilitate this process will assist all potential parties, including helping to identify their interests in the rule and enabling them to reevaluate previously stated positions on issues involved in the rulemaking effort.

D. Key Issues for Negotiation; Invitation to Comment on Issues To Be Addressed

As noted above, Section 7212 sets forth considerable detail regarding the issues to be addressed in developing and promulgating the mandated minimum standards. The Department invites comment on the issues regarding the particular aspects of the standards that the negotiating committee should address in developing its recommendations or report.

The Department is aware of the considerable work that has been and is being done at Federal and State levels and in the private sector to improve various types of identification documents, including driver's licenses. We invite comment on which of these past and ongoing efforts are most relevant to this rulemaking, and on what implications those efforts have for the recommendations and choices to be made in this rulemaking.

IV. Procedures and Guidelines for This Regulatory Negotiation

The following proposed procedures and guidelines will apply to the regulatory negotiation process, subject to appropriate changes made as a result of comments on this Notice or as determined to be necessary during the negotiating process.

A. Notice of Intent To Establish Advisory Committee and Request for Comment

In accordance with the requirements of FACA, an agency of the Federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. It is the purpose of this Notice to indicate the Department's intent to create a Federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the identification of the issues, interests, procedures, and participants.

B. Facilitator

Pursuant to the NRA (5 U.S.C. 566), a facilitator will be selected to serve as an impartial chair of the meetings; assist committee members to conduct discussions and negotiations; and manage the keeping of minutes and records as required by FACA. The facilitator will chair the negotiations, may offer alternative suggestions to committee members to help achieve the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues. The Department has selected Ms. Susan Podziba, an experienced mediator, as its convenor/facilitator for this regulatory negotiation.

C. Membership

The NRA provides that the agency establishing the regulatory negotiation advisory committee ''shall limit membership to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership.'' The purpose of the limit on membership is to promote committee efficiency in deliberating and reaching decisions on recommendations. The Department of Transportation's current inclination is to observe that limit. However, the Department notes that its experience with regulatory negotiations indicates that limiting membership to fewer than 25 members is often desirable.

D. Interests Likely To Be Affected; Representation of Those Interests

The committee will include a representative from the Department of Transportation and from the interests and organizations listed below. Each representative may also name an alternate, who will be encouraged to attend all committee meetings and will serve in place of the representative if necessary. The DOT representative is the Designated Federal Official (DFO and will participate in the deliberations and activities of the committee with the same rights and responsibilities as other committee members. The DFO will be authorized to fully represent the Department in the discussions and negotiations of the committee.

[11] The Department of Transportation is obligated under Section 7212 to propose and adopt minimum standards regardless of whether the committee to be established pursuant to Section 7212 is able to achieve consensus on all required elements of those standards. Thus, if the committee were unable to reach consensus on any of the elements, the Department of Transportation would, in consultation with the Department of Homeland Security, independently develop proposals regarding those elements.

The Department has tentatively identified the following organizations or interests to participate in the negotiated rulemaking. The convenor will contact these and other organizations to determine their interests and willingness to serve on the committee.

(1) Department of Transportation.

(2) Department of Homeland Security.

(3) State offices that issue driver's licenses or personal identification cards; American Association of Motor Vehicle Administrators.

(4) Representatives of elected State officials; National Governors Association; National Conference of State Legislatures; National Association of Attorneys General.

(5) Other interested parties.

(a) Groups or organizations presenting the interests of applicants for and holders of driver's licenses and personal identification cards.

(i) Consumer organization.

(ii) Organization representing non-citizens/immigrants.

(b) Organizations with technological and operational expertise in document security.

(c) Privacy and civil liberties groups.

(d) Law enforcement officials.

The first four interests identified above are required by the statute to participate in the negotiated rulemaking.[12] The ''other interests'' mentioned are those that appear to the Department to have potentially important roles in helping achieve consensus on recommendations on the issues involved. The Department seeks comment on whether there are additional interests that should be represented on the committee. The Department also seeks comments on particular organizations and individuals who would appropriately represent interests on the committee. Please identify such organizations and interests if they exist and explain why they should have separate representation on the committee.

The list of potential parties specifically named above is not presented as a complete or exclusive list from which committee members will be selected, nor does inclusion on the list of potential parties mean that a party on the list has agreed to participate as a member of the committee or as a member of a coalition, or will necessarily be invited to serve on the committee. The list merely indicates parties that DOT has tentatively identified as representing significantly affected interests in the outcome of the proposed rule. This document gives notice of this process to other potential participants and affords them the opportunity to request representation in the negotiations. The procedure for requesting such representation is set out below. In addition, comments and suggestions on this tentative list are invited.

The Department is aware that there are many more potential participants, whether they are listed here or not, than there are membership slots on the committee. We do not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations. What is important is that each affected interest be adequately represented. To have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. These coalitions, to provide adequate representation, must agree to support, both financially and technically, a member to the committee whom they will choose to represent their ''interest.'' Those selected, it should be noted, represent one or more interests, not just themselves or their organizations.

It is very important to recognize that interested parties who are not selected to membership on the committee can make valuable contributions to this negotiated rulemaking effort in any of several ways:

- The person or organization could request to be placed on the committee mailing list, submitting written comments, as appropriate;
- Any member of the public could attend the committee meetings, caucus with his or her interest's member on the committee, and, as provided in FACA, speak to the committee. Time will be set aside during each meeting for this purpose, consistent with the committee's need for sufficient time to complete its deliberations; or
- The person or organization could assist in the work of a workgroup that might be established by the committee.

Informal workgroups are usually established by an advisory committee to assist the committee in ''staffing'' various technical matters (*e.g.*, researching or preparing summaries of the technical literature or comments on particular matters such as economic issues) before the committee so as to facilitate committee deliberations. They also might assist in estimating costs and drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the committee. Given their staffing function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied.

E. Applications for Membership

Each application for membership or nomination to the committee should include:

(i) the name of the applicant or nominee and the interest(s) such person would represent;

(ii) evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and

(iii) a written commitment that the applicant or nominee would participate in good faith.

Please be aware that each individual or organization affected by a final rule need not have its own representative on the committee. Rather, each interest must be adequately represented, and the committee should be fairly balanced.

F. Good Faith Negotiation

Committee members should be willing to negotiate in good faith and have the authority from his or her constituency to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition should, therefore, designate as its representative an official with credibility and authority to insure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members for the duration of the negotiation process. Other qualities that are very helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the bargaining table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to promote and protect the ability of the committee to conduct its negotiations. Finally, good faith includes a willingness to move away from the type of positions usually taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the committee.

[12] Section 7212(b)(4)(B).

G. Notice of Establishment

After evaluating comments received as a result of this Notice, the Department will issue a notice announcing the establishment and composition of the committee. After the committee is chartered, the negotiations will begin.

H. Administrative Support and Meetings

Staff support will be provided by the Department. Meetings are currently expected to take place in Washington, DC.

I. Notice of Proposed Rulemaking

The committee's objective will be to prepare a report, consisting of its consensus recommendations for the regulatory text of a draft notice of proposed rulemaking. This report may also include suggestions for the NPRM preamble, regulatory evaluation, or other supplemental documents. If the committee cannot achieve consensus on some aspects of the proposed regulatory text, it will, pursuant to the ''ground rules'' the committee has established, identify in its report those areas of disagreement, and provide explanations for any disagreement. The Department will use the information and recommendations from the committee report to draft a notice of proposed rulemaking and, as appropriate, supporting documents. Committee recommendations and other documents produced by the committee will be placed in the rulemaking docket.

In the event that the Department's NPRM differs from the committee's consensus recommendations, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the decision to depart from the committee's recommendations.

Following the issuance of NPRM and comment period, the Department will prepare and provide to the committee a comment summary. The committee will then be asked to determine whether the committee should reconvene to discuss changes to the NPRM based on the comments.

J. Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the committee will establish detailed procedures for the meetings. The meetings of the committee will be open to the public. Any person attending the committee meetings may address the committee if time permits or file statements with the committee.

K. Record of Meetings

In accordance with FACA requirements, the facilitator will prepare summaries of all committee meetings. These summaries will be placed in the public docket for this rulemaking.

L. Tentative Schedule

The Department is seeking to convene the first of the committee's meetings by the last week of March 2005. The date and exact location of that meeting will be announced in the agency's notice of establishment of the advisory committee. Meetings are expected to last approximately three and a half days each. The negotiation process will proceed according to a schedule of specific dates for subsequent meetings that the committee devises at its first meeting. We will publish a single notice of the schedule of all future meetings in the **Federal Register**, but will amend the notice through subsequent **Federal Register** notices if it becomes necessary to do so. The interval between meetings will be approximately two weeks.

The first meeting will commence with an overview of the regulatory negotiation process conducted by the facilitator.

Issued this 17th day of February, 2005, in Washington, DC.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 05–3458 Filed 2–17–05; 4:26 pm]

BILLING CODE 4910–62–P

Notices

Federal Register

Vol. 70, No. 35

Wednesday, February 23, 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

Animal and Plant Health Inspection Service

[Docket No. 05–007–1]

Ventria Bioscience; Availability of Environmental Assessment for Field Test of Genetically Engineered Rice Expressing Lysozyme

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a confined field planting of rice plants genetically engineered to express the protein lysozyme. This environmental assessment is available for public review and comment.

DATES: We will consider all comments we receive on or before March 25, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–007–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–007–1.

Reading Room: You may read the environmental assessment and any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Levis Handley, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5721. To obtain copies of the environmental assessment, contact Ms. Ingrid Berlanger, at (301) 734–4885; e-mail *ingrid.e.berlanger@aphis.usda.gov*. The environmental assessment is also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/04_30901r_ea.pdf*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

On November 4, 2004,the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS permit number 04–309–01r) from Ventria Bioscience, Sacramento, CA, for a permit for a confined field planting of rice (*Oryza sativa*) line LZ159–53, which is genetically engineered to express a gene coding for the protein lysozyme. The field planting is to be conducted in Scott County, MO. The subject rice plants have been genetically engineered, using micro-projectile bombardment, to express human lysozyme protein. Expression of the gene is controlled by the rice glutelin 1 promoter, the rice glutelin 1 signal peptide, and the NOS, (nopaline synthase) terminator sequence from *Agrobacterium tumefaciens*. The gene is expressed only in the endosperm. In addition, the plants contain the coding sequence for the gene hygromycin phosphotransferase (*hpt*), an enzyme which confers tolerance to the antibiotic hygromycin. This gene is a selectable marker that is only expressed during plant cell culture and is not expressed in any tissues of the mature plant. Expression of the gene is controlled by the rice glucanase 9 (*Gns 9*) promoter and the Rice Alpha Amylase 1A (RAmy1A) terminator. The genetically engineered rice plants are considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant pathogens.

The purpose of the field planting is for pure seed production and for the extraction of lysozyme for a variety of research and commercial products. The planting will be conducted using physical confinement measures. In addition, the experimental protocols and field plot design, as well as the procedures for termination of the field planting, are designed to ensure that none of the subject rice plants persist in the environment beyond the termination of the experiments.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated with the proposed confined field planting of the subject rice plants, an environment assessment (EA) has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of the EA are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 16th day of February, 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–701 Filed 2–22–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–006–1]

Ventria Bioscience; Availability of Environmental Assessment for Field Test of Genetically Engineered Rice Expressing Lactoferrin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a confined field planting of rice plants genetically engineered to express the protein lactoferrin. This environmental assessment is available for public review and comment.

DATES: We will consider all comments we receive on or before March 25, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–006–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–006–1.

Reading Room: You may read the environmental assessment and any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Levis Handley, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5721. To obtain copies of the environmental assessment, contact Ms. Ingrid Berlanger, at (301) 734–4885; e-mail *ingrid.e.berlanger@aphis.usda.gov*. The environmental assessment is also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/04_30201r_ea.pdf.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

On October 28, 2004, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS permit number 04–302–01r) from Ventria Bioscience, Sacramento, CA, for a permit for a confined field planting of rice (*Oryza sativa*) plants genetically engineered to express a gene coding for the protein lactoferrin, rice line LF164–12. The field planting is to be conducted in Scott County, MO. The subject rice plants have been genetically engineered, using micro-projectile bombardment, to express human lactoferrin protein. Expression of the gene is controlled by the rice glutelin 1 promoter, the rice glutelin 1 signal peptide, and the NOS, (nopaline synthase) terminator sequence from *Agrobacterium tumefaciens*. The gene is expressed only in the endosperm. In addition, the plants contain the coding sequence for the gene hygromycin phosphotransferase (*hpt*), an enzyme which confers tolerance to the antibiotic hygromycin. This gene is a selectable marker that is only expressed during plant cell culture and is not expressed in any tissues of the mature plant. Expression of the gene is controlled by the rice glucanase 9 (*Gns 9*) promoter and the Rice Alpha Amylase 1A (RAmy1A) terminator. The genetically engineered rice plants are considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant pathogens.

The purpose of the field planting is for pure seed production and for the extraction of lactoferrin for a variety of research and commercial products. The planting will be conducted using physical confinement measures. In addition, the experimental protocols and field plot design, as well as the procedures for termination of the field planting, are designed to ensure that none of the subject rice plants persist in the environment beyond the termination of the experiments.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated with the proposed confined field planting of the subject rice plants, an environment assessment (EA) has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of the EA are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 16th day of February 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–703 Filed 2–22–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Floodwater Retarding Structure No. 4 of the Martinez Creek Watershed, Bexar County, TX

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure No. 4 of the Martinez Creek Watershed, Bexar County, Texas.

FOR FURTHER INFORMATION CONTACT: Larry D. Butler, Ph.D, State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone (254) 742–9800.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Larry D. Butler, Ph.D, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure No. 4 to maintain the present level of flood control benefits and comply with the current performance and safety standards.

Rehabilitation of the site will require the dam to be modified to meet current performance and safety standards for a high hazard dam. The modification will consist of raising the top of dam 2.8 feet, replacing the 24 inch principal spillway pipe with a 42 inch principal spillway pipe, and lowering the sediment pool by 3.6 feet. The detention pool area would increase slightly due to the decreased size of the sediment pool. All disturbed areas will be planted with plants that have wildlife values. The proposed work will not affect any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (Section 313, Pub. L. 106–472). Total project cost is estimated to be $1,026,400, of which $745,800 will be paid from the Small Watershed Rehabilitation funds and $280,600 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Larry D. Butler, Ph.D, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Larry D. Butler,

State Conservationist.

[FR Doc. 05–3394 Filed 2–22–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2005 Census Survey of Maricopa County, Arizona.

Form Number(s): CSMA–1, CSMA–1(PV), CSMA–1 L1, CSMA–1 L2, CSMA–1 L3, CSMA–2, CSMA–1(RI), SC–116, and SC–351(GQ).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 12,042 hours.

Number of Respondents: 118,607.

Avg. Hours Per Response: Housing Units—6 min.; Group Quarters—10 min.; Reinterview—8 min.

Needs and Uses: In lieu of a Special Census, the Maricopa Association of Governments (MAG), at the request of their member jurisdictions (24 cities and towns within Maricopa County), requested the U.S. Census Bureau to conduct a data collection effort for the purpose of updating population and housing unit information from the Census 2000. This data collection effort is called the 2005 Census Survey of Maricopa County, Arizona (CSMA). The CSMA will produce September 1, 2005 estimates for housing units, occupied housing units, resident population; resident population living in housing units; and resident population not living in housing units (group quarters and outdoor locations) for Maricopa County, 24 cities in the county, the balance of the county, 5 sub-areas for Phoenix, and 2 sub-areas for Mesa. The resident population estimates will be used to distribute state-shared revenues.

The MAG requested that we produce the estimates by a survey of housing units and a 100 percent enumeration of the non-housing unit population.

The Census Bureau will conduct a survey of housing units to produce the estimates for resident population in housing units, the number of housing units, and the number of occupied housing units. We will contact each identified group quarters and visit outdoor locations to obtain the resident population not living in housing units. We will sum the two resident populations to produce the total number of residents.

We will mail each sample housing unit a questionnaire to determine whether it was occupied on September 1, 2005. If it was occupied, we will ask for the total number of people living in the housing unit and for each person's name, age, and sex. We will follow-up with each housing unit that does not return its questionnaire and conduct either a computer assisted telephone interview or a personal visit interview. We will use a vendor's data base to obtain phone numbers by matching on the address.

We will have a reinterview program for the cases completed by personal visit. The reinterview program will contact approximately ten percent of the personal visit cases to check the enumerators' work. Reinterview is necessary to deter the falsification of data by enumerators in the field. Its primary purpose is to identify enumerators who intentionally falsify data, and to promptly remove them. Reinterview is also used for quality assurance purposes to ensure that enumerators are following procedures correctly, and to retrain those who are not.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: 13 U.S.C. 8.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk

Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: February 16, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–3390 Filed 2–22–05; 8:45 am]

BILLING CODE 3510–07–U

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: U.S. Commercial Service Trade Specialist Counseling Session Survey.

Agency Form Number: ITA–XXXX.

OMB Number: 0625–XXXX.

Type of Request: Regular Submission.

Burden: 170 hours.

Number of Respondents: 1700.

Avg. Hours Per Response: 10 minutes.

Needs and Uses: The International Trade Administration's U.S. Commercial Service is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets. As part of its mission, the U.S. Commercial Service uses ''Quality Assurance Surveys'' to collect feedback from the U.S. business clients it serves. The subject survey deals with a particular aspect of service provided by U.S. Commercial Service trade specialists. These specialists counsel clients about their international marketing needs and work with the clients to provide ''global trade solutions.'' The subject survey asks clients whether they are satisfied with the counseling they have received from U.S. Commercial Service domestic trade specialists. Results from the survey will be used to make improvements to the agency's business processes, in order to provide better and more effective export assistance to U.S. companies.

Affected Public: U.S. companies who have participated in counseling sessions with U.S. Commercial Service trade specialists.

Frequency: Twice a year.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by writing Diana Hynek, Department Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or e-mail: *dHynek@doc.gov*. Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer at: *David_Rostker@omb.eop.gov* or fax: (202) 395–7285, within 30 days of the publication of this notice in the **Federal Register**.

Dated: February 16, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–3392 Filed 2–22–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Business and Professional Classification Report.

Form Number(s): SQ–CLASS.

Agency Approval Number: 0607–0189.

Type of Request: Revision of a currently approved collection.

Burden: 10,835 hours.

Number of Respondents: 50,000.

Avg. Hours Per Response: 13 minutes.

Needs and Uses: The U.S. Census Bureau sponsors the SQ–CLASS, ''Business and Professional Classification Report,'' to collect information needed to keep the retail, wholesale, and services samples current with the business universe. Because of rapid changes in the marketplace caused by the emergence of new businesses, the death of others, and changes in company organization, the Census Bureau canvasses a sample of new Employer Identification Numbers (EINs) obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Each firm selected in this sample is canvassed once for data on the establishment(s) associated with the new EIN. A different sample of EINs is canvassed four times a year.

We are revising the layout and wording of Item 9 of the SQ–CLASS form and the corresponding section of the instruction sheet to improve the assignment of kind-of-business codes based on the North American Industry Classification System (NAICS). We do not expect these changes to increase burden.

The completed SQ–CLASS form provides sales, receipts, or revenue; company organization; new or refined NAICS codes; and other key information needed for sampling to maintain proper coverage of the universe. Based on the collected information, EINs meeting the criteria for inclusion in the Census Bureau's retail, wholesale, or service surveys are subjected to second sampling. The retail and wholesale EINs selected in this second sampling are placed on a panel to report in our monthly surveys. Additional panels of selected units are included in the annual surveys. The selected service EINs report on an annual basis.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: Respondents are contacted only once.

Respondent's Obligation: Voluntary.

Legal Authority: 13 U.S.C. 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax ((202) 395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: February 16, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–3393 Filed 2–22–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Annual Trade Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 25, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Trimble, Bureau of the Census, Room 2682–FOB 3, Washington, DC 20233–6500, (301) 763–2703.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to expand the currently approved Annual Trade Survey (ATS) to include agents, brokers and electronic markets (AGBR). The expanded survey will include a selected sample of firms operating offices facilitating sales between businesses in the United States. Data will be collected annually on sales, commissions, value of sales arranged for others, e-commerce sales, and operating expenses. Initially, we will request two years of data for the AGBR. Afterwards, we will request one year of data. The expanded survey will be mailed to a sample of firms on a company basis to reduce respondent burden. In order to set up reporting arrangements for companies we will contact them by phone and by mail. We will request data for calendar year. Two report forms will be developed to collect AGBR data. Two forms are needed to accommodate both large and small firms. The mailings will be conducted in January following the survey year requested. Respondents will have thirty days to complete the report form before a follow-up form is sent. Later, as needed, an additional follow-up form will be sent, and a telephone follow-up will be conducted.

This expansion of the ATS survey is being conducted to obtain a missing component of wholesale data. The current ATS collects data for merchant wholesalers, and MSBO, but does not obtain data for AGBRs. The Bureau of Economic Analysis (BEA) has made repeated requests for these data that they consider vital to accurately measuring sales for wholesale trade, and important inputs to BEA's preparation of National Income and Product accounts and their annual input-output tables. This expansion to ATS will provide annual data for the entire wholesale sector. Data will be published at the United States summary level for selected wholesale industries.

II. Method of Collection

We will collect this information by mail, Fax, and telephone follow-up.

III. Data

OMB Number: 0607–0195.

Additional Form Numbers: SA–42(AGBR) and SA–42A(AGBR).

Type of Review: Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Additional Respondents: 659.

Estimated Time for Additional Response: 23 minutes (avg.).

Estimated Additional Annual Burden Hours: 253.

Estimated Additional Annual Cost: The cost to the respondent is estimated to be $5,968 based on an annual response burden of 253 hours and a rate of $23.59 per hour to complete the form.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 16, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–3391 Filed 2–22–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No.: 97–8A003.

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to the Association for the Administration of Rice Quotas, Inc. (''AARQ'') on February 14, 2005. The Certificate has been amended eight times. The most recent previous amendment was issued to AARQ on March 3, 2004, and published in the **Federal Register** March 18, 2004 (69 FR 12831). The original Export Trade Certificate of Review No. 97–00003 was issued to AARQ on January 21, 1998, and published in the **Federal Register** on January 28, 1998 (63 FR 4220).

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or by e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2005).

Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

AARQ's Export Trade Certificate of Review has been amended to:

1. Reflect the name, address, and corporate changes as follows: ''American Rice, Inc., Houston, Texas'' is amended to read ''American Rice, Inc., Houston Texas (a subsidiary of SOS Cuetara USA, Inc.)'' due to a corporate acquisition. ''Kitoku America, Inc., Davis, California (a subsidiary of Kitoku Shinryo Co., Ltd.)'' is amended to read ''Kitoku America, Inc., Burlingame, California (a subsidiary of Kitoku Shinryo Co., Ltd. (Japan))'' due

to an address change. ''Mermentau Rice, Inc., Mermentau, Louisiana'' is amended to read ''Louisiana Rice Mill, LLC, Mermentau, Louisiana'' due to a corporate name change. ''Newfieldrice, Inc., Miami, Florida'' is amended to read ''Newfieldrice, Inc., Miramar, Florida'' due to an address change. ''Nishimoto Trading Company, Ltd., Los Angeles, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan))'' is amended to read ''Nishimoto Trading Co., Ltd., Santa Fe Springs, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan))'' due to an address change. ''Riviana Foods, Inc. Houston, Texas'' is amended to read ''Riviana Foods Inc., Houston, Texas (a subsidiary of Ebro Puleva, S.A. (Spain))'' due to a corporate acquisition.

2. Delete the following companies as Members of the Certificate: ''ACH Food Companies, Inc., Cordova, Tennessee,'' and ''KD International Trading, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprises, Inc.).''

In addition to the above, the Export Trade Activities and Methods of Operation of AARQ's Certificate have been updated to delete obsolete references to AARQ's earlier years of operation. Also, for clarification regarding the disposition of left over quantities from the bidding process, the following text has been added to item 2.F.(a) of the Export Trade Activities and Methods of Operation: ''In the event fewer than 18 metric tons remain at the conclusion of the bidding process, the Administrator shall first offer the remaining quantity in succession to each of the next highest bidders, and then in succession from the highest to the lowest successful bidder(s).''

The effective date of the amended certificate is November 17, 2004. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: February 16, 2005.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E5–739 Filed 2–22–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021405A]

Endangered Species; File No. 1522; Permit No. 1356

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

ACTION: Receipt of application and modification request.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit (File No. 1522) or modification to a permit (Permit No. 1356) to take loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles for purposes of scientific research:

Kenneth J. Lohmann, Department of Biology, Wilson Hall, CB#3280, University of North Carolina at Chapel Hill, Chapel Hill, NC 27599 (File No. 1522);

Inwater Research Group Inc., 4160 NE Hyline Dr., Jensen Beach, FL 34957 (Permit No. 1356).

DATES: Written, telefaxed, or e-mail comments on the new application and amendment requests must be received on or before March 25, 2005.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1522 or Permit No. 1356.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit and amendment are requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–227).

Application for Permit

File No. 1522 Kenneth Lohmann: This applicant proposes to conduct two studies. The first would study the magnetic orientation of hatchlings migrating offshore. Loggerhead and green sea turtle hatchlings would have a lightweight float attached to them and they would be tracked by boat as they migrate offshore. At the conclusion of each test, researchers would recapture each turtle to remove the experimental gear and then release the turtle so that it could continue its migration.

The second study would investigate the navigation of adult loggerhead sea turtles. The study would have two experiments. The first would involve simple displacement involving releases at sites that lie in various directions and distances from the nesting beach so that the tracks could be analyzed in the context of magnetic topography and other potential cues.

The second would involve determining if disrupting the magnetic field around a displaced turtle impairs its ability to home. Two groups of turtles would be released at the same location, one with magnets or magnetic coils attached to their heads, the other with non-magnetic brass bars of equivalent size and weight attached to their heads (the control). Turtles would be tracked using a floating instrument attached to the turtle by means of a six meter long tether consisting of a 7–day corrodible link attached to a meter-long thin, stiff rod and five meters of very stiff stainless steel fishing leader. While the tether set-up would be removed on the beach after the turtle returns to nest, in the event that the researchers are unable to recapture the turtle on a nesting beach they are requesting authorization from NMFS to recapture her at sea and remove the tether equipment.

Application to Modify Permit No. 1356

Permit No. 1356 – Inwater Research Group, Inc.: The existing permit allows the take of green, loggerhead, Kemp's ridley and hawksbill turtles to study the demographic composition and genetic origin of sea turtles within the Key West National Wildlife Refuge, Florida. The permit holder requests a modification to the permit to attach satellite transmitters to a subset of the green sea turtles already authorized to be captured. The Holder also requests authority to conduct sampling all months of the year and to modify their study area to include a 30 kilometer area south, west and north of the Marquesas Keys.

Dated: February 16, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–3441 Filed 2–22–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101204B]

Small Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Seismic Survey in the Southwest Pacific Ocean

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic seismic surveys in the southwestern Pacific Ocean (SWPO) has been issued to the Scripps Institution of Oceanography, (Scripps).

DATES: Effective from February 10, 2005, through February 9, 2006.

ADDRESSES: The authorization and application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. The application is also available at: *http://www.nmfs.noaa.gov/protlres/PR2/Smalll Take/smalltakelinfo.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 6, 2004, NMFS received an application from Scripps for the taking, by harassment, of several species of marine mammals incidental to conducting a low-energy marine seismic survey program during early 2005 in the SWPO. The overall area within which the seismic survey will occur is located between approximately 25° and 50°S, and between approximately 133° and 162.5°W. The survey will be conducted entirely in international waters. The purpose of the seismic survey is to collect the site survey data for a second Integrated Ocean Drilling Program transect to study the structure of the Eocene Pacific from the subtropics into the Southern Ocean. A future ocean-drilling program cruise (not currently scheduled) based on the data collected in the present program will better document and constrain the actual patterns of atmospheric and oceanic circulation on Earth at the time of extreme warmth in the early Eocene. Through the later ocean drilling program, it is anticipated that marine scientists will be able to (1) define the poleward extent of the sub-tropical gyre, (2) establish the position of the polar front, (3) determine sea-surface temperatures and latitudinal temperature gradient, (4) determine the width and intensity of the high-productivity zone associated with these oceanographic features, (5) characterize the water masses formed in the sub-polar region, (6) determine the nature of the zonal winds and how they relate to oceanic surface circulation, and (7) document the changes in these systems as climate evolves from the warm early Eocene to the cold Antarctic of the early Oligocene. As presently scheduled, the seismic survey will occur from approximately February 11, 2005 to March 21, 2005.

Description of the Activity

The seismic survey will involve one vessel. The source vessel, the *R/V Melville*, will deploy a pair of low-energy Generator-Injector (GI) airguns as an energy source (each with a discharge volume of 45 in^3), plus a 450–meter (m) (1476–ft) long, 48–channel, towed hydrophone streamer. As the airguns are towed along the survey lines, the receiving system will receive the returning acoustic signals. The survey program will consist of approximately 11,000 kilometer (km) (5940 nautical mile (nm)) of surveys, including turns. Water depths within the seismic survey area are 4000–5000 m (13,123–16,400 ft) with no strong topographic features. The GI guns will be operated en route between piston-coring sites, where bottom sediment cores will be collected. There will be additional operations associated with equipment testing, start-

up, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The energy to the airguns is compressed air supplied by compressors on board the source vessel. Seismic pulses will be emitted at intervals of 6–10 seconds. At a speed of 7 knots (about 13 km/h), the 6–10 sec spacing corresponds to a shot interval of approximately 21.5–36 m (71–118 ft).

The generator chamber of each GI gun, the one responsible for introducing the sound pulse into the ocean, is 45 in^3. The larger (105 in^3) injector chamber injects air into the previously-generated bubble to maintain its shape, and does not introduce more sound into the water. The two 45/105 in^3 GI guns will be towed 8 m (26.2 ft) apart side by side, 21 m (68.9 ft) behind the *Melville*, at a depth of 2 m (6.6 ft).

General-Injector Airguns

Two GI-airguns will be used from the *Melville* during the proposed program. These 2 GI-airguns have a zero to peak (peak) source output of 237 dB re 1 microPascal-m (7.2 bar-m) and a peak-to-peak (pk-pk) level of 243 dB (14.0 bar-m). However, these downward-directed source levels do not represent actual sound levels that can be measured at any location in the water. Rather, they represent the level that would be found 1 m (3.3 ft) from a hypothetical point source emitting the same total amount of sound as is emitted by the combined airguns in the airgun array. The actual received level at any location in the water near the airguns will not exceed the source level of the strongest individual source and actual levels experienced by any organism more than 1 m (3.3 ft) from any GI gun will be significantly lower.

Further, the root mean square (rms) received levels that are used as impact criteria for marine mammals (see Richardson *et al.*, 1995) are not directly comparable to these peak or pk-pk values that are normally used by acousticians to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or pk-pk decibels, are always higher than the rms decibels referred to in biological literature. For example, a measured received level of 160 dB rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a pk-pk measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.* 1998, 2000). The precise difference between rms and peak or pk-pk values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or pk-pk level for an airgun-type source.

The depth at which the sources are towed has a major impact on the maximum near-field output, because the energy output is constrained by ambient pressure. The normal tow depth of the sources to be used in this project is 2.0 m (6.6 ft), where the ambient pressure is approximately 3 decibars. This also limits output, as the 3 decibars of confining pressure cannot fully constrain the source output, with the result that there is loss of energy at the sea surface. Additional discussion of the characteristics of airgun pulses is provided in Scripps application and in previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)).

Received sound levels have been modeled by L-DEO for two 105 in^3 GI guns, but not for the two 45 in^3 GI-guns, in relation to distance and direction from the airguns. The model does not allow for bottom interactions, and is therefore most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI guns where sound levels of 190, 180, 170, and 160 dB microPascal-m (rms) are predicted to be received are shown in Table 1. Because the model results are for the larger 105 in^3 guns, those distances are overestimates of the distances for the 45 in^3 guns.

TABLE 1. DISTANCES TO WHICH SOUND LEVELS 190, 180, 170, AND 160 DB MICROPASCAL-M (RMS) MIGHT BE RECEIVED FROM TWO 105 IN^3 GI AIRGUNS, SIMILAR TO THE TWO 45 IN^3 GI AIRGUNS THAT WILL BE USED DURING THE SEISMIC SURVEY IN THE SW PACIFIC OCEAN DURING FEBRUARY-MARCH 2005. DISTANCES ARE BASED ON MODEL RESULTS PROVIDED BY LAMONT-DOHERTY EARTH OBSERVATORY (L-DEO).,P0,8/9

	ESTIMATED DISTANCES AT RECEIVED LEVELS (M/FT)			
Water Depth >1000	190 dB	180 dB	170 dB	160 dB
	17/56	54/177	175/574	510/1673

Some empirical data concerning the 180–, and 160–dB distances have been acquired for several airgun configurations, including two GI-guns, based on measurements during an acoustic verification study conducted by L-DEO in the northern Gulf of Mexico (GOM) from 27 May to 3 June 2003 (Tolstoy *et al.*, 2004). Although the results are limited, the data showed that water depth affected the radii around the airguns where the received level would be 180 dB re 1 microPa (rms), NMFS' current injury threshold safety criterion applicable to cetaceans (NMFS, 2000). Similar depth-related variation is likely in the 190–dB distances applicable to pinnipeds. Correction factors were developed and implemented for previous IHAs for activities with water depths less than 1000 m (3281 ft). However, the proposed airgun survey will occur in depths 4000–5000 m (13,123–16,400 ft). As a result, NMFS has determined correction factors are not necessary here since the L-DEO model has been shown to result in more conservative (i.e,. protective) impact zones than indicated by the empirical measurements. Therefore, the assumed 180- and 190–dB radii are 54 m (177 ft) and 17 m (56 ft), respectively. Considering that the 2 GI-airgun array is towed 21 m (69 ft) behind the *Melville* and the vessel is 85 m (270 ft) long, the forward aspect of the 180–dB isopleth (lines of equal pressure) at its greatest depth will not exceed approximately the mid-ship line of the *Melville*. At the water surface, an animal would need to be between the vessel and the 450–m (1476 ft) long hydrophone streamer to be within the 180–dB isopleth.

Bathymetric Sonar and Sub-bottom Profiler

In addition to the 2 GI-airguns, a multi-beam bathymetric sonar and a low-energy 3.5–kHz sub-bottom profiler will be used during the seismic profiling and continuously when underway.

Sea Beam 2000 Multi-beam Sonar – The hull-mounted Sea Beam 2000 sonar images the seafloor over a 120°–wide swath to 4600 m (15092 ft) under the vessel. In ''deep'' mode (400–1000 m

(1312–3281 ft), it has a beam width of 2°, fore-and-aft, uses very short (7–20 msec) transmit pulses with a 2–22 s repetition rate and a 12.0 kHz frequency sweep. The maximum source level is 234 dB microPa (rms).

Sub-bottom Profiler – The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the multi-beam sonar. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Melville*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1 microPa (800 watts) while normal source output is 200 dB re 1 microPa (500 watts). Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Although the sound levels have not been measured directly for the sub-bottom profiler used by the *Melville*, Burgess and Lawson (2000) measured sounds propagating more or less horizontally from a sub-bottom profiler similar to the Scripps unit with similar source output (i.e., 205 dB re 1 microPa m). For that profiler, the 160- and 180–dB re 1 microPa (rms) radii in the horizontal direction were estimated to be, respectively, near 20 m (66 ft) and 8 m (26 ft) from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft) respectively, assuming spherical spreading. Thus the received level for the Scripps sub-bottom profiler would be expected to decrease to 160 and 180 dB about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively, assuming spherical spreading. Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30° beamwidth) and the measurements of Burgess and Lawson (2000).

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses was provided in several previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)) and is not repeated here. Reviewers are referred to those documents for additional information.

Comments and Responses

A notice of receipt and request for 30–day public comment on the application and proposed authorization was published on December 3, 2004 (69 FR 70236). During the 30–day public comment period, NMFS received two comments. One commenter expressed the opinion that marine mammals should not be killed and that these killings are not small. As noted in this document, NMFS believes that no marine mammals are likely to be seriously injured or killed as a result of this L-DEO conducting seismic surveys.The concerns of the second commenter, the Center for Regulatory Effectiveness (CRE), are discussed here.

Comment 1: There is no scientific basis for the use of 190, 180, 170, and 160 dB micro-Pascal (RMS) as criteria for potential injury to marine mammals from seismic operations. NMFS uses these criteria along with L-DEO (Lamont-Doherty Earth Observatory) modeling, to determine the safety (shut-down) radii for seismic surveys. The comment states that those criteria are arbitrary and without scientific basis, were established without external peer review or published reports, and were not based on empirical data.

Response: NMFS disagrees that there is no factual or scientific basis to support the 190, 180, and 160 dB thresholds (we note that 170 dB is not used by NMFS). At the same time we recognize the limitations of these thresholds and, in the interest of transparency, acknowledge and disclose them. These limitations largely stem from the data gaps for many species of marine mammals, individual intra-species variability, and the difficulties inherent in conducting field studies in this area of inquiry (both logistic and ethical). NMFS makes its data, and the analysis of these data, available to the public and solicits public comment. However, there are factual studies that support the threshold values used here.

The 160–dB isopleth for onset of Level B (behavioral) harassment is supported by research conducted by Malme *et al.* (1983, 1984) in their study on the California gray whale when exposed to seismic sounds. They found that migrating gray whales showed definite avoidance reactions and other behavioral changes when exposed to seismic pulses with received levels exceeding about 160 dB re 1 micro Pa (rms). The received levels at which 10 percent, 50 percent and 90 percent of the whales exhibited avoidance were estimated to be 164, 170, and 180 dB (Malme *et al.*, 1989; Richardson *et al.*, 1995).

More recently, McCauley *et al.* (1998) documented localized avoidance by humpback whales of both the seismic array and a single airgun (16–gun 2678–in^3 array and a single 20 in^3 airgun with a source level 227 dB re 1 µPa-m (p-p)). The standoff range (*i.e.*, the closest point of approach of the airgun to the whales) corresponded to received levels around 140 dB re 1 µPa. The initial avoidance response generally occurred at distances of 5 to 8 km (2.7 to 4.3 nm) from the airgun array and 2 km (1.0 nm) from the single gun, with estimated received levels at 140 dB and 143 dB re 1 µPa rms, respectively. However, some individual humpback whales, especially males, approached the vessel within distances 100 to 400 m (328 to 1312 ft), where the maximum received level was 179 dB re 1 µPa rms.

With respect to the 180 and 190 dB thresholds, data that are now available imply that, at least for dolphins, temporary threshold shift (TTS)in marine mammals is unlikely to occur unless the dolphins are exposed to airgun pulses stronger than 180 dB re 1 microPa (rms). However, safety zones must be implemented to protect those species believed to be most sensitive to low-frequency seismic noise: mysticete whales, sperm whales, and likely beaked whales (although beaked whales' best hearing is at significantly higher frequencies than low frequency seismic, it is possible that non-auditory injury may occur at lower sound pressure levels). As a result, NMFS has established the 180- and 190–dB safety zones based on the most sensitive species at the estimated best hearing frequencies. If information is available that sensitive species will not be within the affected area, or empirical data are presented that marine mammal stocks within the affected area do not have hearing capabilities within the source frequencies, then the appropriate safety zones might be reduced in size.

In some cases mitigation safety zones are perhaps larger than necessary to avoid Level A harassment of a particular species or the mitigation measures are one-size-fits-all in nature. This reflects the different sensitivities of affected species and the lack of data. Where different mitigation measures for different species are not practical, NMFS manages for the most sensitive species when multiple species are present. The safety zone for this seismic survey also affords the applicant a set of mitigation measures that can be practically implemented and will promote enforceability of the IHA. In this manner the applicant can move forward with the project in a timely

manner and NMFS' legal mandate is satisfied.

NMFS is striving to improve the quality of the information it relies upon. We are developing sound exposure guidelines that will incorporate the current state of knowledge and take into account variations based on sound source, species type, and energy level. These guidelines will guide agency decisions and give the regulated communities and the public better information for planning, enforcement, and understanding. NMFS expects these guidelines to reflect the evolving understanding and appreciation of how sound affects marine mammals. As part of the process, NMFS has announced its intent to prepare an environmental impact statement and initiated public scoping to fully involve the public (70 FR 1871 (January 11, 2005)). The science underlying those guidelines will undergo external peer review.

Comment 2: The comment states there is no basis for correlating the effects, if any, on marine mammals of sonar and seismic operations.

Response: NMFS agrees that the properties of seismic and sonar are quite different and will take that into account when developing its acoustic guidelines.

Comment 3: NMFS' reliance on the L-DEO propagation model to determine the safety (shut-down) radii for seismic operations is unjustified and unsupported. NMFS has stated that for deep water the L-DEO model overestimates the received sound levels at a given distance. The L-DEO model is also inappropriate for use in shallow and intermediate depths because it cannot account for bottom interactions with sound waves.

Response: We have previously acknowledged the limitations of the model, as has the applicant. The acoustic verification/ calibration study in May/June 2003 in the GOM showed that water depth affected sound propagation (and, accordingly, the size of the safety radii). As a result, correction factors were developed for water depths 100–1000 m (328–3281 ft) and less than 100 m (328 ft). Those correction factors are not relevant for this survey, which will take place in water depths between 4000 and 5000 m (13123 and 16404 ft). Empirical data indicate that for water deeper than 1000 m (3281 ft), L-DEO's model tends to overestimate the received sound levels at any given distance (Tolstoy *et al.*, 2004). Pending acquisition of additional empirical data, Scripps' safety radii will be the values predicted by the model. This approach will ensure that marine mammals are not inadvertently exposed to sound levels greater than what were calculated in the GOM verification study.

Another alternative for estimating propagation would be to conduct simple calculations similar to those found in the Minerals Management Service's (MMS) Environmental Assessment for Geological and Geophysical Seismic Surveys in the GOM. This methodology is illustrated in Appendix C of that document (available at *http://www.gomr.mms.gov/homepg/regulate/environ/nepa/2004–054.pdf*). NMFS believes this methodology would need to be improved prior to use for incidental take authorizations because it does not take into account the fact that marine mammals dive into deeper water where the sound fields normally propagate to greater distances than at the surface. Similarly, using simple propagation logarithms (e.g., Lr = Ls- 20 Log R for deep water propagation) also has shortcomings, in that they overestimate horizontal propagation (seismic airgun arrays project sounds towards the bottom and not horizontally). As a result, until improved models are developed, NMFS believes that using the L-DEO model, with fully explained correction factors where necessary (shallow and intermediate water depths) provides a reasonable methodology for calculating the zones of impact from vertically propagating seismic arrays.

Comment 4: According to the abstract of the calibration study report (Tolstoy *et al.*, 2004)), ''Received [sound] levels in deep water were lower than anticipated based on [L-DEO] modeling, and in shallow water they were higher.'' In other words, the L-DEO model is inaccurate and unreliable in deep and shallow water.

Response: The L-DEO model is a general one that does not take into account the variation in propagation characteristics for the specific water bodies. In the GOM, sound propagation levels in deep water were lower and in shallow water were higher than that estimated by the L-DEO model. Under the MMPA and ESA, NMFS is charged with using the best information available. To the best of NMFS' knowledge, the L-DEO model provides a practical alternative to the use of standard propagation and attenuation calculations. Therefore, a more accurate statement would be that in that part of the GOM received sound levels in deep water were lower than anticipated based on the L-DEO model, and in shallow water they were higher the L-DEO model. Without making acoustic propagation measurements in advance of conducting seismic in each operating area, conservative estimates of sound propagation and attenuation were made. For this Scripps' seismic survey, the *R/V Melville* will conduct approximately 11,000 kilometers (km) (5940 nautical miles (nm)) of straight line seismic transects during the survey. Stopping the vessel to calibrate sound speed profiles for a particular water mass body, while possible, would result in increased costs through time and additional personnel and equipment needed onboard the *R/V Melville*. As an alternative, Scripps erred on the side of marine mammals protection and adopted conservative estimates for sound attenuation to the 160-, 180-, and 190–dB isopleths. For this cruise, NMFS has adopted those conservative estimates.

*Comment 5:*To the best of CRE's knowledge, the L-DEO model is not publically available, and NMFS has not demonstrated that it is sufficiently accurate and reliable to use. If NMFS intends to continue to use or rely on the L-DEO model, then the Agency should: (1) make the model publically available for comment; (2) validate use of the model for all contexts in which NMFS uses or relies on it; and (3) document use of the model and its results for each specific application in question, and make that documentation available for public comment along with the application itself in sufficient detail to allow third parties to reproduce the model results. If there is some reason why NMFS must rely on models that cannot be disclosed, then the agency must perform, document and produce the ''especially vigorous robustness checks'' that NMFS performed on these models. CRE recommends that NMFS adopt the Environmental Protection Agency's (EPA) definition of ''especially rigorous robustness checks.'' If and when NMFS attempts to validate the L-DEO model, CRE recommends that NMFS follow EPA's model validation guidance. (EPA draft guidance is available at: *http://www.epa.gov/osp/crem/library/CREM%20Guidance%Draft%2012103.pdf*.

Response: The L-DEO model is available to the public by contacting L-DEO (see the L-DEO application for the address). In addition, the model is explained in Diebold (2004, unpublished). A copy of this article is available upon request (see **ADDRESSES**). The 2003 GOM seismic airgun calibration study referenced in this document (Tolstoy *et al.*, 2004) was the result of an IHA issued to L-DEO for seismic work in the GOM (68 FR 9991, March 3, 2003). That report has been cited in a number of recent authorizations, and Chapter 3 of that

report has been available since mid–2004 on our homepage where seismic incidental take applications are posted. We consider all references cited in our **Federal Register** notices to be part of our administrative record. Whenever an article is not generally available publically, we strive to make a copy available.

Chapter 3 of the 2003 GOM 90–day monitoring report was also rewritten, submitted for publication, peer-reviewed and finally published in the AGU's Geophysical Research Letters (Tolstoy, M., J.B. Diebold, S.C. Webb, D.R. Bohnenstiehl, E. Chapp, R.C. Holmes, and M. Rawson. 2004. Broadband Calibration of the R/V Ewing Seismic Sources. Geophys. Res. Lett., 31, doi:10.1029/ 2004GL020234, 2004). This scientific article is publically available through subscription, scientific libraries, or Inter-Library loan.

As to other modeling approaches and software that could be used to verify or refute the L-DEO model, there are commercial products available, such as Bellhop, PE, and one called Nucleus that produce illustrations similar to the L-DEO model, but this latter product provides peak levels only, and has several of the same limitations contained in the L-DEO model. There are also publically available packages that include complex water column velocity structure, and seafloor interactions, but most of these have other kinds of limitations (e.g., typically, they do not include arrays of sound sources, and do not analyze for broadband frequencies).

Comment 6: The CRE believes that NMFS should be concerned only with biologically significant effects on marine mammals, citing as support National Research Council reports (NRC 2004, NRC 2000).

Response: NMFS' decisions are made in accordance with the relevant provisions of the MMPA and its implementing regulations. MMPA section 101(a)(5)(D) requires the Secretary to authorize the taking of marine mammals incidental to otherwise lawful activities, provided that the activity will have no more than a negligible impact on the affected species or stocks of marine mammals. ''Negligible impact'' is defined in 50 CFR 216.103 (repeated earlier in this document). This is the relevant standard for the Secretary's decision. Although the term ''biologically significant'' is not used, this concept is captured through application of NMFS' definition of ''negligible impact.''

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the SWPO area and its associated marine mammals can be found in the Scripps application and a number of documents referenced in that application, and is not repeated here. Forty species of cetacean, including 31 odontocete (dolphins and small- and large-toothed whales) species and nine mysticete (baleen whales) species, are believed by scientists to occur in the southwest Pacific in the proposed seismic survey area. Table 2 in the Scripps application summarizes the habitat, occurrence, and regional population estimate for these species. A more detailed discussion of the following species is also provided in the application: Sperm whale, pygmy and dwarf sperm whales, southern bottlenose whale, Arnoux's beaked whale, Cuvier's beaked whale, Shepherd's beaked whale, Mesoplodont beaked whales (Andrew's beaked whale, Blainville's beaked whale, gingko-toothed whale, Gray's beaked whale, Hector's beaked whale, spade-toothed whale, strap-toothed whale), melon-headed whale, pygmy killer whale, false killer whale, killer whale, long-finned pilot whale, short-finned pilot whale, rough-toothed dolphin, bottlenose dolphin, pantropical spotted dolphin, spinner dolphin, striped dolphin, short-beaked common dolphin, hourglass dolphin, Fraser's dolphin, Risso's dolphin, southern right whale dolphin, spectacled porpoise, humpback whale, southern right whale, pygmy right whale, common minke whale, Antarctic minke whale. Bryde's whale, sei whale, fin whale and blue whale. Because the proposed survey area spans a wide range of latitudes (25–500 S), tropical, temperate, and polar species are all likely to be found there. The survey area is all in deep-water habitat but is close to oceanic island (Society Islands, Australes Islands) habitats, so both coastal and oceanic species might be encountered. However, abundance and density estimates of cetaceans found there are provided for reference only, and are not necessarily the same as those that likely occur in the survey area.

Five species of pinnipeds could potentially occur in the proposed seismic survey area: southern elephant seal, leopard seal, crabeater seal, Antarctic fur seal, and the sub-Antarctic fur seal. All are likely to be rare, if they occur at all, as their normal distributions are south of the Scripps survey area. Outside the breeding season, however, they disperse widely in the open ocean (Boyd, 2002; King, 1982; Rogers, 2002). Only three species of pinniped are known to wander regularly into the area (SPREP, 1999): the Antarctic fur seal, the sub-Antarctic fur seal, and the leopard seal. Leopard seals are seen are far north as the Cook Islands (Rogers, 2002).

More detailed information on these species is contained in the Scripps application, which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*.

Potential Effects on Marine Mammals

The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to

be any TTS in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

The Scripps' application provides the following information on what is known about the effects on marine mammals of the types of seismic operations planned by Scripps. The types of effects considered here are (1) tolerance, (2) masking of natural sounds, (2) behavioral disturbance, and (3) potential hearing impairment and other non-auditory physical effects (Richardson *et al.*, 1995). Given the relatively small size of the airguns planned for the present project, the effects are anticipated to be considerably less than would be the case with a large array of airguns. Scripps and NMFS believe it is very unlikely that there would be any cases of temporary or especially permanent hearing impairment, or non-auditory physical effects. Also, behavioral disturbance is expected to be limited to distances less than 500 m (1640 ft), the zone calculated for 160 dB or the onset of Level B harassment. Additional discussion on species-specific effects can be found in the Scripps application.

Tolerance

Numerous studies (referenced in Scripps, 2004) have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers, but that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. However, most measurements of airgun sounds that have been reported concerned sounds from larger arrays of airguns, whose sounds would be detectable farther away than that planned for use in the proposed survey. Although various baleen whales, toothed whales, and pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to airgun pulses than are baleen whales. Given the relatively small and low-energy airgun source planned for use in this project, mammals are expected to tolerate being closer to this source than would be the case for a larger airgun source typical of most seismic surveys.

Masking

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited (due in part to the small size of the GI airguns), although there are very few specific data on this. Given the small acoustic source planned for use in the SWPO, there is even less potential for masking of baleen or sperm whale calls during the present research than in most seismic surveys (Scripps, 2004). GI-airgun seismic sounds are short pulses generally occurring for less than 1 sec every 6–10 seconds or so. The 6–10 sec spacing corresponds to a shot interval of approximately 21.5–36 m (71–118 ft). Sounds from the multi-beam sonar are very short pulses, occurring for 7–20 msec once every 2 to 22 sec, depending on water depth.

Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (Richardson *et al.*, 1986; McDonald *et al.*, 1995, Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). Given the relatively small source planned for use during this survey, there is even less potential for masking of sperm whale calls during the present study than in most seismic surveys. Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses and the relatively low source level of the airguns to be used in the SWPO. Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds.

Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These low frequencies are mainly used by mysticetes, but generally not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the marine mammal signal. If little or no overlap occurs between the industrial noise and the frequencies used, as in the case of many marine mammals relative to airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1999; Terhune, 1999; as reviewed in Richardson *et al.*, 1995). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing, pre-adaptation to tolerate some masking by natural sounds (Richardson *et al.*, 1995) and the relatively low-power acoustic sources being used in this survey, would all reduce the importance of masking marine mammal vocalizations.

Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous dramatic changes in activities, and displacement. However, there are difficulties in defining which marine mammals should be counted as taken by harassment. For many species and situations, scientists do not have detailed information about their reactions to noise, including reactions to seismic (and sonar) pulses. Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not rise to the level of a disruption of a behavioral pattern. However, if a sound source would displace marine mammals from an important feeding or breeding area, such a disturbance may constitute Level B harassment under the MMPA. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is appropriate to resort to estimating how many mammals may be present within a particular distance of industrial

activities or exposed to a particular level of industrial sound. With the possible exception of beaked whales, NMFS believes that this is a conservative approach and likely overestimates the numbers of marine mammals that are affected in some biologically important manner.

The sound exposure criteria used to estimate how many marine mammals might be harassed behaviorally by the seismic survey are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed information on potential disturbance effects on baleen whales, toothed whales, and pinnipeds can be found in Scripps's SWPO application and its Appendix A.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to airgun pulses. Based on current information, NMFS precautionarily sets impulsive sounds equal to or greater than 180 and 190 dB re 1 microPa (rms) as the exposure thresholds for onset of Level A harassment for cetaceans and pinnipeds, respectively (NMFS, 2000). Those criteria have been used in setting the safety (shut-down) radii for seismic surveys. As discussed in the Scripps application and summarized here.

1. The 180–dB criterion for cetaceans is probably quite precautionary, i.e., lower than necessary to avoid TTS let alone permanent auditory injury, at least for delphinids.

2. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS.

3. The level associated with the onset of TTS is considered to be a level below which there is no danger of permanent damage.

Because of the small size of the two 45 in^3 GI-airguns, along with the planned monitoring and mitigation measures, there is little likelihood that any marine mammals will be exposed to sounds sufficiently strong to cause even the mildest (and reversible) form of hearing impairment. Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the 2 GI-airguns (and bathymetric sonar), and to avoid exposing them to sound pulses that might (at least in theory) cause hearing impairment. In addition, research and monitoring studies on gray whales, bowhead whales and other cetacean species indicate that many cetaceans are likely to show some avoidance of the area with ongoing seismic operations. In these cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, Scripps and NMFS believe that it is especially unlikely that any of these non-auditory effects would occur during the proposed survey given the small size of the acoustic sources, the brief duration of exposure of any given mammal, and the planned mitigation and monitoring measures. The following paragraphs discuss the possibility of TTS, permanent threshold shift (PTS), and non-auditory physical effects.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson *et al.* (1995) note that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Little data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2002). Given the available data, the received level of a single seismic pulse might need to be on the order of 210 dB re 1 microPa rms (approx. 221 226 dB pk pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200 205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy (Finneran *et al.*, 2002). Seismic pulses with received levels of 200 205 dB or more are usually restricted to a zone of no more than 100 m (328 ft) around a seismic vessel operating a large array of airguns. Because of the small airgun source planned for use during this project, such sound levels would be limited to distances within a few meters directly astern of the *Melville*.

There are no data, direct or indirect, on levels or properties of sound that are required to induce TTS in any baleen whale. However, TTS is not expected to occur during this survey given the small size of the source limiting these sound pressure levels to the immediate proximity of the vessel, and the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

TTS thresholds for pinnipeds exposed to brief pulses (single or multiple) have not been measured, although exposures up to 183 dB re 1 microPa (rms) have been shown to be insufficient to induce TTS in California sea lions (Finneran *et al.*, 2003). However, prolonged exposures show that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001; Au *et al.*, 2000). For this research cruise therefore, TTS is unlikely for pinnipeds.

A marine mammal within a zone of less than 100 m (328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of ≥205 dB, and possibly more pulses if the mammal moved with the seismic vessel. Also, around smaller arrays, such as the 2 GI-airgun array proposed for use during this survey, a marine mammal would need to be even closer to the source to be exposed to levels greater than or equal to 205 dB. However, as noted previously, most cetacean species tend to avoid operating airguns, although not all individuals do so. In addition, ramping up airgun arrays, which is now standard operational protocol for U.S. and some foreign seismic operations, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. Even with a large airgun array, it is unlikely that these cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative

movement of the vessel and the marine mammal. However, with a large airgun array, TTS would be more likely in any odontocetes that bow-ride or otherwise linger near the airguns. While bow-riding, odontocetes would be at or above the surface, and thus not exposed to strong sound pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow-riding near airguns, they would be exposed to strong sound pulses, possibly repeatedly. During this project, the anticipated 180–dB distance is less than 54 m (177 ft), the array is towed 21 m (69 ft) behind the *Melville* and the bow of the Melville will be 106 m (348 ft) ahead of the airguns and the 205–dB zone would be less than 50 m (165 ft). Thus, TTS would not be expected in the case of odontocetes bow riding during airgun operations and if some cetaceans did incur TTS through exposure to airgun sounds, it would very likely be a temporary and reversible phenomenon.

NMFS believes that, to avoid Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 microPa (rms). The corresponding limit for pinnipeds has been set at 190 dB. The predicted 180- and 190–dB distances for the airgun arrays operated by Scripps during this activity are summarized in Table 1 in this document. It has also been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Because of the slow ship speed, any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment. Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition, as mentioned previously, ramping up the airgun array, which has become standard operational protocol for many seismic operators including Scripps, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the GI airguns.

Permanent Threshold Shift (PTS)

When PTS occurs there is physical damage to the sound receptors in the ear. In some cases there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges. Although there is no specific evidence that exposure to pulses of airgun sounds can cause PTS in any marine mammals, even with the largest airgun arrays, physical damage to a mammal's hearing apparatus can potentially occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during recent controlled studies of TTS have been confirmed to be temporary, with no measurable residual PTS (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Nachtigall *et al.*, 2003). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson *et al.*, 1995). For impulse sounds with very rapid rise times (e.g., those associated with explosions or gunfire), a received level not greatly in excess of the TTS threshold may start to elicit PTS. Rise times for airgun pulses are rapid, but less rapid than for explosions.

Some factors that contribute to onset of PTS are as follows: (1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for odontocetes for exposure to a series of seismic pulses may be on the order of 220 dB re 1 microPa (pk-pk) (approximately 204 dB re 1 microPa rms), then the PTS threshold might be about 240 dB re 1 microPa (pk-pk). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson *et al.*, 1995; Caldwell and Dragoset, 2000). However, it is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance from the source. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. Some pinnipeds do not show strong avoidance of operating airguns. In summary, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient period of time) to cause permanent hearing impairment during this project. In the proposed project marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS, and because of the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. This is due to the fact that even levels immediately adjacent to the 2 GI-airguns may not be sufficient to induce PTS because the mammal would not be exposed to more than one strong pulse unless it swam alongside an airgun for a period of time.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten et al., 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times. While there is no documented evidence that airgun arrays can cause serious

injury, death, or stranding, the association of strandings of beaked whales with naval exercises and an L-DEO seismic survey in 2002 have raised the possibility that beaked whales may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. Information on recent beaked whale strandings may be found in Appendix A of the Scripps application and in several previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)).

It is important to note that seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to physical damage and, indirectly, mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to the sonar-related strandings, there was a September, 2002 stranding of two Cuvier's beaked whales in the Gulf of California (Mexico) when a seismic survey by the Ewing was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing*'s 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and to date is not based on any physical evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but this sonar had much less potential than naval sonars to affect beaked whales. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this plus the various incidents involving beaked whale strandings associated with naval exercises suggests a need for caution when conducting seismic surveys in areas occupied by beaked whales. However, the present project will involve a much smaller sound source than used in typical seismic surveys. Considering this and the required monitoring and mitigation measures, any possibility for strandings and mortality is expected to be eliminated.

Non-auditory Physiological Effects

Possible types of non-auditory physiological effects or injuries that might theoretically occur in marine mammals exposed to strong underwater sound might include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no evidence that any of these effects occur in marine mammals exposed to sound from airgun arrays (even large ones). However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

It is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. That is especially so in the case of the present project where the airguns are small, the ship's speed is relatively fast (7 knots or approximately 13 km/h), and for the most part the survey lines are widely spaced with little or no overlap.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at that frequency, the ensuing resonance could cause damage to the animal. There may also be a possibility that high sound levels could cause bubble formation in the blood of diving mammals that in turn could cause an air embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner (ed), 1999; Houser *et al.*, 2001).

A workshop (Gentry [ed.] 2002) was held to discuss whether the stranding of beaked whales in the Bahamas in 2000 (Balcomb and Claridge, 2001; NOAA and USN, 2001) might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.), 2002). Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales.

Until recently, it was assumed that diving marine mammals are not subject to the bends or air embolism. However, a short paper concerning beaked whales stranded in the Canary Islands in 2002 suggests that cetaceans might be subject to decompression injury in some situations (Jepson *et al.*, 2003). If so, that might occur if they ascend unusually quickly when exposed to aversive sounds. However, the interpretation that the effect was related to decompression injury is unproven (Piantadosi and Thalmann, 2004; Fernandez *et al.*, 2004). Even if that effect can occur during exposure to mid-frequency sonar, there is no evidence that this type of effect occurs in response to low-frequency airgun sounds. It is especially unlikely in the case of this project involving only two small GI-airguns.

In summary, little is known about the potential for seismic survey sounds to cause either auditory impairment or other non-auditory physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects. Also, the planned mitigation and monitoring measures are expected to minimize any possibility of serious injury, mortality or strandings.

Possible Effects of Mid-frequency Sonar Signals

A multi-beam bathymetric sonar (Sea Beam 2000, 12 kHz) and a sub-bottom profiler will be operated from the source vessel essentially continuously during the planned survey. Details about these sonars were provided previously in this document.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans generally (1) are more powerful than the Sea Beam 2000 sonar, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the Sea Beam 2000). The area of possible influence of the Sea Beam 2000 is much smaller-a narrow band oriented in the cross-track

direction below the source vessel. Marine mammals that encounter the Sea Beam 2000 at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses and vessel speed. Therefore, as harassment or injury from pulsed sound is a function of total energy received, the actual harassment or injury threshold for the bathymetric sonar signals (approximately 10 ms) would be at a much higher dB level than that for longer duration pulses such as seismic signals. As a result, NMFS believes that marine mammals are unlikely to be harassed or injured from the multi-beam sonar.

Masking by Mid-frequency Sonar Signals

Marine mammal communications will not be masked appreciably by the multi-beam sonar signals or the sub-bottom profiler given the low duty cycle and directionality of the sonars and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals from the Sea Beam 2000 sonar do not overlap with the predominant frequencies of the calls, which would avoid significant masking.

For the sub-bottom profiler, marine mammal communications will not be masked appreciably because of their relatively low power output, low duty cycle, directionality (for the profiler), and the brief period when an individual mammal may be within the sonar's beam. In the case of most odonotocetes, the sonar signals from the profiler do not overlap with the predominant frequencies in their calls. In the case of mysticetes, the pulses from the pinger do not overlap with their predominant frequencies.

Behavioral Responses Resulting from Mid-frequency Sonar Signals

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned strandings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. However, all of these observations are of limited relevance to the present situation. Pulse durations from these sonars were much longer than those of the Scripps multi-beam sonar, and a given mammal would have received many pulses from the naval sonars. During Scripps' operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1–sec pulsed sounds at frequencies similar to those that will be emitted by the multi-beam sonar used by Scripps and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). The relevance of these data to free-ranging odontocetes is uncertain and in any case the test sounds were quite different in either duration or bandwidth as compared to those from a bathymetric sonar.

Scripps and NMFS are not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the 12.0 kHz frequency of the *Melville*'s multi-beam sonar. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the individual animals. The pulsed signals from the sub-bottom profiler are much weaker than those from the multi-beam sonar and somewhat weaker than those from the 2 GI-airgun array. Therefore, significant behavioral responses are not expected.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is much concern that sonar noise can cause serious impacts to marine mammals (for discussion see Effects of Seismic Surveys on Marine Mammals). However, the multi-beam sonars proposed for use by Scripps are quite different than sonars used for navy operations. Pulse duration of the bathymetric sonars is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for much less time given the generally downward orientation of the beam and its narrow fore-aft beam-width. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar rather drastically relative to that from the sonars used by the Navy. Therefore, hearing impairment by multi-beam bathymetric sonar is unlikely.

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar. Sound levels from a sub-bottom profiler similar to the one on the Melville were estimated to decrease to 180 dB re 1 microPa (rms) at 8 m (26 ft) horizontally from the source (Burgess and Lawson, 2000), and at approximately 18 m downward from the source. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or especially permanent hearing impairment in marine mammals appear to be higher than 180 dB (see earlier discussion). Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

Estimates of Take by Harassment for the SWPO Seismic Survey

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize or eliminate the possibility of Level A harassment or mortality. Scripps has calculated the ''best estimates'' for the numbers of animals that could be taken by level B harassment during the proposed SWPO seismic survey using data on marine mammal density (numbers per unit area) and estimates of the size of the affected area, as shown in the predicted RMS radii table (see Table 1). Because there is very little information on marine mammal densities in the proposed survey area, densities were used from two of Longhurst's (1998) biogeographic provinces north of the survey area that are oceanographically similar to the two

provinces in which most of the seismic activities will take place.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 2 GI-gun array planned to be used for this project. The anticipated zone of influence of the multi-beam sonar and sub-bottom profiler are less than that for the airguns, so it is assumed that during simultaneous operations of these instruments that any marine mammals close enough to be affected by the multi-beam and sub-bottom profiler sonars would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multi-beam sonar. Given their characteristics (described previously), no Level B harassment takings are considered likely when the multi-beam and sub-bottom profiler are operating but the airguns are silent.

Table 2 provides the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB. A detailed description on the methodology used by Scripps to arrive at the estimates of Level B harassment takes that are provided in Table 2 can be found in Scripps's IHA application for the SWPO survey.

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TABLE 2. Estimates of the possible numbers of marine mammal exposures to the different sound levels, and the numbers of different individuals that might be exposed, during the proposed seismic surveys in the SW Pacific Ocean during February-March 2005.

Odontocetes					
Physeteridae					
Sperm whale	*9*	*19*	*9*	*0.0*	*19*
Pygmy sperm whale	8	35	8	NA	35
Dwarf sperm whale	6	66	6	*0.0*	66
Ziphiidae					
Southern bottlenose whale	17	93	17	*0.0*	93
Arnoux's beaked whale	3	14	2	NA	14
Cuvier's beaked whale	4	23	4	*0.0*	23
Shepard's beaked whale	2	9	2	NA	
Andrew's beaked whale	2	9	2	NA	
Blaineville's beaked whale	4	23	4	NA	
Ginkgo-toothed beaked whale	1	5	1	NA	
Gray's beaked whale	4	23	4	NA	
Hector's beaked whale	1	5	1	NA	5
Spade-toothed beaked whale	1	5	1	NA	5
Strap-toothed beaked whale	3	19	3	NA	19
Delphinidae					
Rough-toothed dolphin	247	440	243	0.1	440
Bottlenose dolphin	247	440	243	0.1	440
Pantropical spotted dolphin	1235	2202	1215	0.1	2202
Spinner dolphin	618	1101	608	0.1	1101
Striped dolphin	124	220	122	0.0	220
Common dolphin	124	220	122	0.0	220
Hourglass dolphin	618	1101	608	0.2	1101
Fraser's dolphin	124	220	122	0.0	220
Southern right-whale dolphin	371	660	365	NA	660
Risso's dolphin	371	660	365	0.2	660
Melon-headed whale	4	19	4	0.0	19
Pygmy killer whale	7	39	7	0.0	39
False killer whale	11	58	11	0.0	58
Killer whale	18	97	18	0.1	97
Short-finned pilot whale	18	97	18	0.0	97
Long-finned pilot whale	29	155	28	0.0	155
Phocoenidae					
Spectacled porpoise	114	1181	112	NA	1181
Mysticetes					
Southern right whale	*2*	*5*	*2*	*NA*	*5*
Pygmy right whale	2	3	2	NA	3
Humpback whale	*2*	*3*	*2*	*0.0*	*3*
Minke whale	32	61	31	0.0	61
Dwarf minke whale	3	6	3	NA	6
Bryde's whale	4	8	4	0.0	8
Sei whale	*4*	*8*	*4*	*0.0*	*8*
Fin whale	*2*	*5*	*2*	*0.0*	*5*
Blue whale	*2*	*3*	*2*	*0.1*	*3*
Pinnipeds					
Southern elephant seal	23	NA	22	0.0	23
Leopard seal	46	NA	45	0.1	46
Crabeater seal	23	NA	22	0.0	23
Antarctic fur seal	46	NA	45	0.0	46
Sub-antarctic fur seal	46	NA	45 (45)	NA	46

[a] Best estimate and maximum estimates of density are from Table 3, in Scripps, 2004.

[b] Regional population size estimates are from Table 2, in Scripps, 2004.

[c] NA indicates that regional population estimates are not available.

	0.95
Delphinids	4162

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Conclusions

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3.2–4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel when large arrays have been used. However, reactions at the longer distances appear to be atypical of most species and situations, and to large arrays. Furthermore, if they are encountered, the numbers of mysticetes estimated to occur within the 160–dB isopleth in the survey area are expected to be low. In addition, the estimated numbers presented in Table 2 are considered overestimates of actual numbers for three primary reasons. First, because the survey is scheduled for the end of the austral summer, some of the mysticetes and some species of odontocetes are expected to be present in feeding areas south of the survey area. Second, the estimated 160–dB radii used here are probably overestimates of the actual 160–dB radii at deep-water sites (Tolstoy et al. 2004) such as the SWPO survey area. Third, Scripps plans to use smaller GI guns than those on which the radii are based.

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the small size and the relatively low sound output of the 2 GI-airguns to be used, and the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of a very small area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment. Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the affected populations.

Based on the 160–dB criterion, the best estimates of the numbers of individual cetaceans that may be exposed to sounds ≥160 dB re 1 microPa (rms) represent 0 to approximately 0.2 percent of the populations of each species that may be encountered in the survey area. The assumed population sizes used to calculate the percentages are presented in Table 2 of the Scripps application. For species listed as endangered under the ESA, the estimates are significantly less than 0.1 percent of the SWPO population of sperm, humpback, sei, and fin whales; probably less than 0.1 percent of southern right whales; and 0.1 percent of blue whales (Table 2). In the cases of mysticetes, beaked whales, and sperm whales, the potential reactions are expected to involve no more than small numbers (2–32) of individual cetaceans. The sperm whale is the endangered species that is most likely to be exposed, and their SWPO population is approximately 140,000 (data of Butterworth et al. 1994 with g(0) correction from Barlow (1999) applied).

Larger numbers of delphinids may be affected by the proposed seismic study, but the population sizes of species likely to occur in the operating area are large, and the numbers potentially affected are small relative to the population sizes (see Table 2). The best estimate of number of individual delphinids that might be exposed to sounds 160 dB re 1 microPa (rms) represents significantly less than 0.01 percent of the approximately 8,200,000 dolphins estimated to occur in the SWPO, and 0–0.2 percent of the populations of each species occurring there (Table 2).

Mitigation measures such as controlled speed, course alteration, observers, ramp ups, and power downs or shut downs when marine mammals are seen within defined ranges should further reduce short-term reactions, and minimize any effects on hearing. In all cases, the effects are expected to be short-term, with no lasting biological consequence. In light of the type of take expected and the small percentages of affected stocks of cetaceans, the action is expected to have no more than a negligible impact on the affected species or stocks of cetaceans.

Effects on Pinnipeds

Five pinniped species-the sub-Antarctic fur seal, Antarctic fur seal, crabeater seal, leopard seal, and southern elephant seal-may be encountered at the survey sites, but their distribution and numbers have not been documented in the proposed survey area. An estimated 22–45 individuals of each species of seal may be exposed to airgun sounds with received levels > 160 dB re 1 microPa (rms). The estimates of pinnipeds that may be exposed to received levels > 160 dB are probably overestimates of the actual numbers that will be affected significantly. The proposed survey would have, at most, a short-term effect on their behavior and no long-term impacts on individual pinnipeds or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. As is the case for cetaceans, the short-term exposures to sounds from the two GI-guns are not expected to result in any long-term consequences for the individuals or their populations and the activity is expected to have no more than a negligible impact on the affected species or stocks of pinnipeds.

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not result in any appreciable fish kill. Various experimental studies showed that airgun discharges cause little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on fish hearing, may occur at somewhat greater distances than previously thought (McCauley *et al.*, 2000a,b, 2002; 2003). Even so, any injurious effects on fish would be limited to short distances from the source. Also, many of the fish that might otherwise be within the injury-zone are likely to be displaced from this region prior to the approach of the airguns through avoidance reactions to the passing seismic vessel or to the airgun sounds as received at distances beyond the injury radius.

Fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 µPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the

disturbing activity may again elicit disturbance responses from the same fish.

Fish near the airguns are likely to dive or exhibit some other kind of behavioral response. This might have short-term impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. Thus, the proposed surveys would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Some of the fish that do not avoid the approaching airguns (probably a small number) may be subject to auditory or other injuries.

Zooplankton that are very close to the source may react to the airgun's shock wave. These animals have an exoskeleton and no air sacs; therefore, little or no mortality is expected. Many crustaceans can make sounds and some crustacea and other invertebrates have some type of sound receptor. However, the reactions of zooplankton to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause this type of reaction would probably occur only very close to the source, so few zooplankton concentrations would be affected. Impacts on zooplankton behavior are predicted to be negligible, and this would translate into negligible impacts on feeding mysticetes.

Potential Effects on Subsistence Use of Marine Mammals

There is no known legal subsistence hunting for marine mammals in the SWPO, so the proposed Scripps activities will not have any impact on the availability of these species or stocks for subsistence users.

Mitigation

For the proposed seismic survey in the SWPO during February-March 2005, Scripps will deploy 2–GI airguns as an energy source, with a total discharge volume of 90 in^3. The energy from the airguns will be directed mostly downward. The directional nature of the airguns to be used in this project is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance as compared with the levels expected at that distance if the source were omnidirectional with the stated nominal source level. Also, the small size of these airguns is an inherent and important mitigation measure that will reduce the potential for effects relative to those that might occur with large airgun arrays. This measure is in conformance with NMFS encouraging seismic operators to use the lowest intensity airguns practical to accomplish research objectives.

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this document), will be implemented for the subject seismic surveys: (1) Speed and course alteration (provided that they do not compromise operational safety requirements); (2) shut-down procedures; and (3) ramp-up procedures. Because the safety radius for cetaceans is only 54 m (177 ft) the use of passive acoustics to detect vocalizing marine mammals is not warranted for this survey. Similarly, and because the *Melville* will be transiting a distance of approximately 11,000 km (5940 nm) during the survey period at a speed of approximately 7 knots, aerial and secondary vessel support is not warranted.

Speed and Course Alteration

If a marine mammal is detected outside its respective safety zone (180 dB for cetaceans, 190 dB for pinnipeds) and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety zone. If the mammal appears likely to enter the safety zone, further mitigative actions will be taken (i.e., either further course alterations or shut-down of the airguns).

Shut-down Procedures

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the animal enter the safety radius, the airguns will be shut down before the animal is within the safety radius. Likewise, if a marine mammal is already within the safety radius when first detected, the airguns will be shut down immediately.

Following a shut-down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it (1) is visually observed to have left the safety zone, or (2) has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds, or (3) has not been seen within the zone for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, bottlenose and beaked whales.

Ramp-up Procedure

A ''ramp-up'' procedure will be followed when the airguns begin operating after a period without airgun operations. The 2–GI guns will be added in sequence 5 minutes apart. During ramp-up procedures, the safety radius for the 2–GI guns will be maintained.

During the day or night, ramp-up cannot begin from a shut-down unless the entire 180–dB safety radius has been visible for at least 30 minutes prior to the ramp up (i.e., no ramp-up can begin in heavy fog or high sea states). During nighttime operations, if the entire safety radius is visible using either vessel lights or night-vision devices (NVDs), then start up of the airguns from a shut down may occur. Considering that the safety zone will be an area approximately from mid-ship sternward to the area of the hydrophone streamer and extending only about 46 m (ft) beyond the vessel, NMFS believes that either deck lighting or NVDs will be capable of locating any marine mammal that might enter the safety zone at night.

Comments on past IHAs raised the issue of prohibiting nighttime operations as a practical mitigation measure. However, this is not practicable due to cost considerations and ship time schedules. The daily cost to the federal government to operate vessels such as *Melville* is approximately $33,000-$35,000 /day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, each trip could require an additional three to five days to complete, or up to $175,000 more, depending on average daylight at the time of work.

If a seismic survey vessel is limited to daylight seismic operations, efficiency would also be much reduced. Without commenting specifically on how that would affect the present project, for seismic operators in general, a daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys; reduction in the total number of seismic cruises annually due to longer cruise durations; a need for additional vessels to conduct the seismic operations; or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law.

Marine Mammal Monitoring

Scripps must have at least two visual observers on board the Melville, and at least one must be an experienced marine mammalsw observer that NMFS has approved in advance of the start of the PO cruise. These observers will be on duty in shifts of no longer than 4 hours.

The visual observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime airgun operations, during any nighttime start-ups of the airguns and at night. During daylight, vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after a shut-down. NMFS has determined that a monitoring requirement for observers to be on watch at night whenever daytime monitoring resulted in one or more shut-down situations due to marine mammal presence is not warranted for this operation since the *Melville* will be transiting the area and not remaining in the area where this requirement would provide protection for marine mammals. With a ship speed of 7 knots, the *Melville* may be a number of miles from the marine mammal siting/shut-down area by night-time.

Use of multiple observers will increase the likelihood that marine mammals near the source vessel are detected. Scripps bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are on stand-by and not required to be on watch at all times. The observer(s) and bridge watch will watch for marine mammals from the highest practical vantage point on the vessel or from the stern of the vessel, whichever provides the greatest total visibility of the safety zone.

In addition, biological observers are required to record biological information on marine mammals sighted outside the safety zone, but within the 160–dB isopleth. For this activity, the observer(s) will systematically scan the area around the vessel with Big Eyes binoculars, reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-finding binoculars (Leica L.F. 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal or sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and power-down or shut-down, can be implemented. If the GI-airguns are shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers are not required to be on duty during ongoing seismic operations at night (although they may do so); bridge personnel will watch for marine mammals during this time and will call for the airguns to be shut-down if marine mammals are observed in or about to enter the safety radii. However, a biological observer must be on standby at night and available to assist the bridge watch if marine mammals are detected. If the airguns are ramped-up at night (see previous section), two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using either deck lighting or NVDs that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has determined that the proposed mitigation and monitoring ensures that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array; if ramp-up is required, two marine mammal observers will be required to monitor the safety radii using shipboard lighting or NVDs for at least 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible.

Reporting

Scripps will submit a report to NMFS within 90 days after the end of the cruise, which is currently predicted to occur during February and March, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

NMFS has issued a biological opinion regarding the effects of this action on ESA-listed species and critical habitat under the jurisdiction of NMFS. That biological opinion concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

The NSF made a FONSI determination on September 30, 2004, based on information contained within its EA, that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of NEPA. NSF determined, therefore, that an environmental impact statement would not be prepared. On December 3, 2004 (69 FR 70236), NMFS noted that the NSF had prepared an EA for the SWPO surveys and made this EA available upon request. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in NSF's EA and determined that the NSF EA accurately and completely describes the proposed action alternative, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted the NSF EA under 40 CFR 1506.3 and made its own FONSI. The NMFS FONSI also takes into consideration additional mitigation measures required by the IHA that are not in NSF's EA. Therefore, it is not necessary to issue a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to L-DEO for this activity. A copy of the EA and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

Determinations

NMFS has determined that the impact of conducting the seismic survey in the SWPO off may result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

For reasons stated previously in this document, this determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that it is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be well within a few dozen meters of the vessel because of the small acoustic source; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to the distance from the seismic vessel to the 180–dB isopleth. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, the proposed seismic program will not interfere with any legal subsistence hunts, since seismic operations will not take place in subsistence whaling and sealing areas and will not affect marine mammals used for subsistence purposes.

Authorization

NMFS has issued an IHA to L-DEO to take marine mammals, by harassment, incidental to conducting seismic surveys in the SWPO for a 1–year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: February 10, 2005.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–3442 Filed 2–22–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine and Reinstating Textile Visa Requirements

February 17, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits and reinstating textile visa requirements.

EFFECTIVE DATE: January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection website (http://www.cbp.gov), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on November 19, 2004, December 31, 2004, and February 7, 2005, between the Governments of the United States and Ukraine establishes limits for certain wool textile products, produced or manufactured in Ukraine and exported during the period beginning on January 1, 2005 and extending through December 31, 2005. Goods exported from Ukraine will also no longer be subject to the notice and letter concerning overshipments of 2004 limits (see 69 FR 72181, published on December 13, 2004).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2005 limits. The letter also directs the Commissioner to reinstate textile visa requirements for Ukraine; those requirements were suspended in a notice and letter to the Commissioner dated December 30, 2004 (see 70 FR 793, published on January 5, 2005). These requirements are set forth in the notice and letter to the Commissioner of Customs dated February 22, 1999 (see 64 FR 9477). In order to provide a period for adjustment, the United States will allow shipments of goods that are not accompanied by an export visa to enter the United States if exported prior to March 25, 2005. However, shipments exported from Ukraine on or after March 25, 2005, must be accompanied by an export visa issued by the Government of Ukraine, and shipments without an export visa will be denied entry.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Information regarding the availability of the 2005 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 17, 2005.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on November 19, 2004, December 31, 2004, and February 7, 2005, between the Governments of the United States and Ukraine, you are directed to prohibit, effective on January 1, 2005, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 2005 and extending through December 31, 2005, in excess of the following levels of restraint:

Category	Twelve-month limit
435	108,000 dozen.
442	17,230 dozen.
444	74,665 numbers.
448	74,665 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Ukraine.

These limits may be revised if Ukraine becomes a member of the World Trade

Organization (WTO) and the United States applies the WTO agreement to Ukraine.

Products in the above categories exported during 2004 shall be charged to the applicable category limits for that year (see directive dated December 10, 2003) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive. Goods exported from Ukraine will also no longer be subject to the directive dated December 9, 2004 concerning overshipments of 2004 limits.

You are also directed to reinstate textile visa requirements for Ukraine, as set forth in the directive dated February 22, 1999, thus canceling the directive dated December 30, 2004 that suspended such requirements. In order to provide a period for adjustment, the United States will allow shipments of goods that are not accompanied by an export visa to enter the United States if exported prior to March 25, 2005. However, shipments exported from Ukraine on or after March 25, 2005, must be accompanied by an export visa issued by the Government of Ukraine, and shipments without an export visa will be denied entry.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. E5–740 Filed 2–22–05; 8:45 am]

BILLING CODE 3510–DRS

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 25, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 16, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: The Professional Development Impact Study—Full Study Data Collection Instruments.

Frequency: On occasion.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,682.

Burden Hours: 791.

Abstract: The current OMB package requests clearance for the instruments to be used in the full Professional Development Impact Study. The Professional Development Impact Study is a national demonstration project designed to test innovative models of professional development for reading instruction in the second grade. The data collection instruments will measure the background characteristics of the sample, fidelity of the intervention's implementation, and outcomes of the intervention.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2686. 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 Bennie Jessup at her e-mail address *Bennie.Jessup@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. E5–713 Filed 2–22–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.334A (Partnership grants) and 84.334S (State grants).

Dates: Applications Available: February 23, 2005.

Deadline for Transmittal of Applications: April 11, 2005.

Deadline for Intergovernmental Review: June 22, 2005.

Eligible Applicants: (1) A state; or (2) a partnership consisting of (A) one or more local educational agencies acting on behalf of (i) one or more elementary schools or secondary schools, and (ii) the secondary schools that students from the schools described in (i) would normally attend; (B) one or more degree granting institutions of higher education; and (C) at least two community organizations or entities, such as businesses, professional associations, community-based organizations, philanthropic organizations, State agencies,

institutions or agencies sponsoring programs authorized under subpart 4 of Part A of Title IV of the Higher Education Act of 1965, or other public or private agencies or organizations.

Note: For Partnership grants, the fiscal agent/applicant must be either an institution of higher education that is not pervasively sectarian or a local education agency. For State grants, the fiscal agent/applicant must be a single State agency as designated by the State's governor.

Estimated Available Funds: $113,189,000 for new partnership grants and $74,276,000 for new state grants.

Estimated Range of Awards: $100,000–$7,000,000 per year for partnership grants and $500,000–$3,500,000 per year for state grants.

Estimated Average Size of Awards: $501,000 per year for partnership grants and $3,000,000 per year for state grants.

Maximum Award: We will reject any application for a partnership grant that proposes a budget exceeding $800 per student for a single budget period of 12 months. We will reject any application for a state grant that proposes a budget exceeding $3,500,000 for a single budget period of 12 months. We also will reject any partnership or state grant application that proposes a budget that increases after the first 12-month budget period. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 226 Partnership grants and 24 State grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 72 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: GEAR UP supports early college preparation and awareness activities for low-income students.

Program Authority: 20 U.S.C. 1070a–21.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 694.

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: $113,189,000 for new partnership grants and $74,276,000 for new state grants.

Estimated Range of Awards: $100,000–$7,000,000 per year for partnership grants and $500,000–$3,500,000 per year for state grants.

Estimated Average Size of Awards: $501,000 for partnership grants and $3,000,000 per year for state grants.

Maximum Award: We will reject any application for a partnership grant that proposes a budget exceeding $800 per student for a single budget period of 12 months. We will reject any application for a State grant that proposes a budget exceeding $3,500,000 for a single budget period of 12 months. We also will reject any partnership or state grant application that proposes a budget that increases after the first 12-month budget period. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 226 Partnership grants and 24 State grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 72 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) A State; or (2) a partnership consisting of (A) one or more local educational agencies acting on behalf of (i) one or more elementary schools or secondary schools, and (ii) the secondary schools that students from the schools described in (i) would normally attend; (B) one or more degree granting institutions of higher education; and (C) at least two community organizations or entities, such as businesses, professional associations, community-based organizations, philanthropic organizations, State agencies, institutions or agencies sponsoring programs authorized under subpart 4 of Part A of Title IV of the Higher Education Act of 1965, or other public or private agencies or organizations.

Note: For Partnership grants, the fiscal agent/applicant must be either an institution of higher education that is not pervasively sectarian or a local education agency. For State grants, the fiscal agent/applicant must be a single State agency as designated by the State's Governor.

2. *Cost Sharing or Matching:* Section 404C of the Higher Education Act of 1965, as amended, requires grant recipients to provide not less than 50 percent of the total cost of the project for each year of the project. A partnership with three or fewer institutions of higher education as members may propose a non-Federal contribution of less than 50 percent, but not less than 30 percent of the total cost of the project for each year of the project. The non-Federal share of project costs may be in cash or in-kind. Applicants will be held to the matching commitment proposed in the application for funding, even if the proposed match is higher than the percent required by statute.

3. *Other:* For State grants, at least 25 percent, and not more than 50 percent of grant funds must be spent on early college preparation and awareness, and at least 50 percent of grant funds must be spent on postsecondary scholarships to eligible GEAR UP students. The Secretary may waive the scholarship percentage requirement if the applicant demonstrates that it has another means of providing the students with financial assistance the program otherwise requires.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via the Internet by downloading the package from the program Web site at: *http://www.ed.gov/programs/gearup/index.html.*

You also may obtain a copy of the application package at the following address: Angela Oliphant, Gaining Early Awareness and Readiness for Undergraduate Programs, U.S. Department of Education, 1990 K Street, NW., suite 6100, Washington, DC 20006–8524. Telephone: (202) 502–7676.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative addresses the selection criteria that reviewers use to evaluate your application. You must limit the application narrative found in Part 4 of the application to the equivalent of no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space 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 and no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support.

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 23, 2005.

Deadline for Transmittal of Applications: April 11, 2005.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

Deadline for Intergovernmental Review: June 22, 2005.

4. *Intergovernmental Review:* These programs are 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 packages for these programs.

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 these programs must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

a. *Electronic Submission of Applications:*. Applications for grants under the GEAR UP Program—CFDA Numbers 84.334A and 84.334S must be submitted electronically using e-Application available through the Department's e-Grants system. The e-Grants system is accessible through its portal page at: *http://e-grants.ed.gov*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site is 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the GEAR UP Title Page Form, Project Budget Summary Forms 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 GEAR UP Title Page Form to the Application Control Center after following these steps:

(1) Print the GEAR UP Title Page Form 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 GEAR UP Title Page Form.

(4) Fax the signed GEAR UP Title Page Form to the Application Control Center at (202) 245–6272.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an e-Application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under For Further Information Contact (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to the Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may

submit your application in paper format, if you are unable to submit an application through the e-Application system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Department's e-Application system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Angela Oliphant, U.S. Department of Education, 1990 K Street, NW., suite 6101, Washington, DC 20006–8524. Fax: (202) 502–7675.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: 84.334A or 84.334S (as appropriate), 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: 84.334A or 84.334S (as appropriate), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: 84.334A or 84.334S (as appropriate), 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—on the GEAR UP Title Page Form the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are inthe application package.

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 period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The objectives of the GEAR UP program are: (1) To increase the academic performance and preparation for postsecondary education of participating students; (2) to increase the rate of high school graduation and participation in postsecondary education of participating students; and (3) to increase educational expectations for participating students and student and family knowledge of postsecondary education options, preparation, and financing.

To assess the performance of the program in achieving these objectives, the Department has developed a number of performance measures that are included in the application package. All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Angela Oliphant, Gaining Early Awareness and Readiness for Undergraduate Programs, U.S. Department of Education, 1990 K Street, NW., suite 6100, Washington, DC 20006–8524. Telephone: (202) 502–7676.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–3339.

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 16, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–3455 Filed 2–22–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.069]

Federal Student Aid; Leveraging Educational Assistance Partnership and Special Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice of the deadline dates for receipt of State applications for Award Year 2005–2006 funds.

SUMMARY: This is a notice of the deadline dates for receipt of State applications for Award Year 2005–2006 funds under the Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Educational Assistance Partnership (SLEAP) programs.

The LEAP and SLEAP programs, authorized under Title IV, Part A, Subpart 4 of the Higher Education Act of 1965, as amended (HEA), assist States in providing aid to students with substantial financial need to help them pay for their postsecondary education costs through matching formula grants to States. Under section 415C(a) of the HEA, a State must submit an application to participate in the LEAP and SLEAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Department has approved, a different State agency to administer the LEAP Program.

DATES: To assure funding under the LEAP and SLEAP programs for Award Year 2005–2006, a State must meet the applicable deadline date. Applications submitted electronically must be received by 11:59 p.m. (eastern time) May 27, 2005. Paper applications must be received by May 13, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., room 111G5, Washington, DC 20202. Telephone: (202) 377–3304. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Only the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands may submit an application for funding under the LEAP and SLEAP programs.

State allotments for each award year are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In Award Year 2004–2005, 46 States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands received funds under the LEAP Program. Additionally, 34 States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands received funds under the SLEAP Program.

Applications Submitted Electronically: Financial Partners within Federal Student Aid has automated the LEAP and SLEAP application process in the Financial Management System (FMS). Applicants may use the web-based form (Form 1288–E OMB 1845–0028) which is available on the FMS LEAP on-line system at the following Internet address: *http://fsa-fms.ed.gov.*

Paper Applications Delivered By Mail: States or territories may request a paper version of the application (Form 1288 OMB 1845–0028) by contacting Mr. Greg Gerrans, LEAP Program Manager, at (202) 377–3304 or by e-mail: *greg.gerrans@ed.gov.* The form will be mailed to you.

A paper application sent by mail must be addressed to: Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., room 111G5, Washington, DC 20202.

The Department of Education encourages applicants that are completing a paper application to use certified or at least first-class mail when sending the application by mail to the Department. The Department must receive paper applications that are mailed no later than May 13, 2005.

Paper Applications Delivered By Hand: Paper applications that are hand-delivered must be delivered to Mr. Greg Gerrans, LEAP Program Manager, Financial Partners, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., room 111G5, Washington, DC 20002. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (eastern time), except Saturdays, Sundays, and Federal holidays.

Paper applications that are hand-delivered must be received by 4:30 p.m. (eastern time) on May 13, 2005.

Applicable Regulations: The following regulations are applicable to the LEAP and SLEAP programs:

(1) The LEAP and SLEAP Program regulations in 34 CFR part 692.

(2) The Student Assistance General Provisions in 34 CFR part 668.

(3) The Regulations Governing Institutional Eligibility in 34 CFR part 600.

(4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 84 (Governmentwide Requirements for

Drug-Free Workplace (Financial Assistance)), part 85 (Governmentwide Debarment and Suspension (Nonprocurement)), part 86 (Drug and Alcohol Abuse Prevention), and part 99 (Family Educational Rights and Privacy).

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.

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Program Authority: 20 U.S.C. 1070c *et seq.*

Dated: February 17, 2005.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 05–3456 Filed 2–22–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of subsequent arrangement.

SUMMARY: This notice has been issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada and Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of 4,393,500 kg of U.S.-origin natural uranium hexafluoride, 2,970,000 kg of which is uranium, from Cogema Resources Inc., Saskatoon Saskatchewan, Canada to Urenco Almelo, Netherlands, Eurodif France, and Urenco Gronau, Germany. The material, which is now located at Cameco Corp., Port Hope, Ontario, will be transferred to the aforementioned recipients for toll enrichment. Urenco Almelo will receive 660,000 kg uranium, Eurodif France will receive 1,650,000 kg uranium, and Urenco Gronau will receive 660,000 kg uranium. Upon completion of the enrichment, the recipients will transfer the material to the Electicite de France, British Energy, and RWE Germany. Cameco Corp. originally obtained the uranium hexafluoride under the UF6 Fee Implementing Contract Component.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement is not inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Kurt Siemon,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 05–3422 Filed 2–22–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 9, 2005, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Presentation: Waste Disposition Issues on the Oak Ridge Reservation.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued in Washington, DC on February 16, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–3464 Filed 2–22–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–136–001]

Cheyenne Plains Gas Pipeline Company, L.L.C.; Notice of Compliance Filing

February 15, 2005.

Take notice that on February 7, 2005, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) tendered for filing as part of its FERC Gas Tariff, Original Volume No 1, the following tariff sheets to become effective January 22, 2005:

Substitute First Revised Sheet No. 289
Substitute Original Sheet No. 347
Substitute Original Sheet No. 348
Second Revised Sheet No. 402

Cheyenne Plains states that the tariff sheets are filed to comply with the Commission's January 21 Order addressing proposed revisions and clarifications to the tariff.

Cheyenne Plains states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–727 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–255–004]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

February 15, 2005.

Take notice that on February 10, 2005, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 320 and Fifth Revised Sheet No. 345, with a proposed effective date of May 8, 2004.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–725 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–178–000]

Columbia Gas Transmission Corporation; Notice of Tariff Filing and Non-Conforming Service Agreements

February 15, 2005.

Take notice that on February 7, 2005, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of \its FERC Gas Tariff, Second Revised Volume No. 1, Ninth Revised Sheet No. 500B, with an effective date of March 5, 2005.

Columbia also tendered for filing the following Service Agreements for consideration and approval:

FTS Service Agreement No. 81689, between Columbia Gas Transmission Corporation and Amerada Hess Corporation dated February 1, 2005.

FTS Service Agreement No. 81690, between Columbia Gas Transmission Corporation and Amerada Hess Corporation dated February 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–731 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–180–000]

Discovery Gas Transmission LLC; Notice of Tariff Filing

February 15, 2005.

Take notice that on February 9, 2005, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective April 1, 2005:

Seventh Revised Sheet No. 20
First Revised Sheet No. 31
Fifth Revised Sheet No. 33
Second Revised Sheet No. 41
Second Revised Sheet No. 42
Fifth Revised Sheet No. 44
First Revised Sheet No. 51
Fifth Revised Sheet No. 53
First Revised Sheet No. 100
Fourth Revised Sheet No. 101
Fourth Revised Sheet No. 105
Fourth Revised Sheet No. 106
Third Revised Sheet No. 134
Second Revised Sheet No. 142
First Revised Sheet No. 143
Third Revised Sheet No. 144
First Revised Sheet No. 185
First Revised Sheet No. 194
First Revised Sheet No. 197
Original Sheet No. 197A
First Revised Sheet No. 201
Second Revised Sheet No. 202
First Revised Sheet No. 207
First Revised Sheet No. 221
Third Revised Sheet No. 222
First Revised Sheet No. 223
First Revised Sheet No. 227
First Revised Sheet No. 241
Second Revised Sheet No. 242
First Revised Sheet No. 246

Discovery states that this filing is made in part for administrative purposes and in part as a housekeeping matter to clarify, update and clean up several items in Discovery's tariff.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–719 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–248–002 and RP04–251–003]

El Paso Natural Gas Company; Notice of Corrected Tariff Sheet

February 15, 2005.

Take notice that on January 21, 2005, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following corrected tariff sheets, with an effective date of February 20, 2005:

Fifth Revised Sheet No. 215A

El Paso states that on January 14, 2005, it incorrectly designated Sheet No. 215A as Fourth Revised Sheet No. 215A and not Fifth Revised Sheet No. 215A. El Paso is re-submitting the above-referenced tariff sheet as the corrected sheet.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on February 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–724 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2090]

Green Mountain Power Corporation; Notice of Authorization for Continued Project Operation

February 15, 2005.

On August 31, 1999, Green Mountain Power Corporation, licensee for the Waterbury Project No. 2090, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. Project No. 2090 is located on the Little River in Washington County, Vermont.

The license for Project No. 2090 was issued for a period ending August 31, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year

an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2090 has been issued to Green Mountain Power Corporation for a period effective September 1, 2001, through August 31, 2002. This license was effective until the issuance of a new license for the project or other disposition under the FPA. Because issuance of a new license (or other disposition) did not take place on or before September 1, 2002, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Green Mountain Power Corporation is authorized to continue operation of the Waterbury Project No. 2090 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–721 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–179–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 15, 2005.

Take notice that on February 7, 2005, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective April 1, 2005:

Third Revised Volume No. 1

Twenty-Fifth Revised Sheet No. 14
Seventh Revised Sheet No. 231-B
Second Revised Sheet No. 231-C

Original Volume No. 2

Fortieth Revised Sheet No. 2.1

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–732 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–176–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Tariff Filing

February 15, 2005.

Take notice that on February 4, 2005, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 264, to become effective March 7, 2005.

Panhandle states that this filing is being made to replace the index price under section 12.11(c) of the General Terms and Conditions with an updated index location that meets the Commission guidelines for jurisdictional tariffs.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–729 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–305–000 and ER05–305–001]

Pinelawn Power, LLC; Notice of Issuance of Order

February 16, 2005.

Pinelawn Power, LLC (Pinelawn Power) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for wholesale sales of energy, capacity and ancillary services at market-based rates. Pinelawn Power also requested waiver of various Commission regulations. In particular, Pinelawn Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Pinelawn Power.

On February 15, 2005, the Commission granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Pinelawn Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is March 17, 2005.

Absent a request to be heard in opposition by the deadline above, Pinelawn Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Pinelawn Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Pinelawn Power's issuances of securities or assumptions of liability.

Copies of the full text of the Commission's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–706 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–457–001, ER04–457–002, and EL05–60–000]

PJM Interconnection, L.L.C.; Notice of Institution of Proceeding and Refund Effective Date

February 15, 2005.

On February 10, 2005, the Commission issued an order in the above-referenced dockets initiating a proceeding in Docket No. EL05–60–000 under section 206 of the Federal Power Act, and directing PJM to explain, within 30 days from the date of issuance of the Commission's order, the restudy procedures for generation and transmission interconnection projects. 110 FERC ¶ 61,099 (2005).

The refund effective date in Docket No. EL05–60–000, established pursuant to section 206 of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–720 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–542–003 and RP04–129–001, and RP04–359–001]

Texas Eastern Transmission, LP; Notice of Compliance Filing

February 15, 2005.

Take notice that on February 2, 2005, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing an explanation in compliance with the January 26, 2005, Order in the captioned dockets, in which the Commission accepted an uncontested Joint Offer of Settlement.

Texas Eastern explains that the January 26, 2005, Order directed Texas Eastern to file revised tariff sheets reflecting the settlement rates within 15 days of the date of the Order.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on February 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–723 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–175–000]

Trunkline LNG Company, LLC; Notice of Tariff Filing

February 15, 2005.

Take notice that on February 4, 2005, Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, First Revised Sheet No. 28, to become effective March 7, 2005.

TLNG states that this filing is being made to replace the specified index price under section 2.5 of rate schedule LLS with an index price that meets the Commission guidelines for jurisdictional tariffs.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–728 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–177–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Sheet

February 15, 2005.

Take notice that on February 4, 2005, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Fourth Revised Sheet No. 42 and Original Sheet No. 42A, to become effective March 6, 2005.

WIC states that these tariff sheets specify a timeline for the sale of available firm capacity.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–730 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–90–003]

AES Ocean Express, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Modifications to the Ocean Express Pipeline Project

February 16, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) and the Mineral Management Service (MMS) have prepared this Environmental Assessment (EA) to discuss the environmental impacts of the Modifications to the Ocean Express Pipeline Project proposed by AES Ocean Express, L.L.C. (Ocean Express) in the above referenced docket. The proposed project is located in Broward County, Florida; State Waters of Florida; and Federal Waters of the United States.

This EA has been prepared to comply with the requirements of the National Environmental Policy Act (NEPA), the Council of Environmental Quality (CEQ) regulations for implementing NEPA (Title 40, Code of Federal Regulations (CFR), sections 1500–1508), and the Commission's regulations (18 CFR part 380). The staff concludes that approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The EA also evaluates alternatives to the proposal, including system alternatives; major route alternatives; and route variations.

The FERC prepared this EA to address the potential environmental impacts of the proposed modifications. The original project was addressed by the Final Environmental Impact Statement for the Ocean Express Pipeline Project (FEIS) issued on November 28, 2003. The modified project would use the same methodologies for deepwater construction and onshore construction. However, the landfall portion of the pipeline would be installed in a 14,000-foot tunnel instead of the two HDD segments and associated direct pipelay on the seafloor. The tunnel amendment would also incorporate minor route changes to accommodate the methodology. These minor route changes would result in a slight decrease in the length of the landfall portion and thus the overall project length.

Approximately 95 percent of the original project analyzed in the FEIS is relatively unchanged, with the exception of the 2-inch increase in pipeline diameter. The tunnel amendment would increase the pipeline diameter for the modified project from 24 inches to 26 inches and internally coat the pipeline to allow increased flow rates. Ocean Express does not propose to increase the certificated capacity (842,000 dekatherms/day). Ocean Express proposes to install a pressure reducing station inside the new tunnel to reduce the onshore Maximum Allowable Operating Pressure (MAOP) to 1,480 pounds per square inch gauge (psig) or less from the certificated 2,200 psig. The modifications include an access building at the tunnel shaft at the Dania Beach Boulevard Traffic Circle with a gas vent.

Comment Procedures and Public Meetings

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP02–090–003;
- Label one copy of your comments for the attention of Gas Branch 3, PJ11.3; and
- Mail your comments so that they will be received in Washington, DC on or before March 18, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of the project. However, the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E5–705 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1951–119]

Georgia Power Company; Notice of Availability of Environmental Assessment

February 16, 2005.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), Commission staff have prepared an environmental assessment (EA) that analyzes the environmental impacts of allowing Georgia Power Company, licensee for the Sinclair Hydroelectric Project (FERC No. 1951), to amend the existing project boundary. The current project boundary at the 350-foot elevation contour would be moved to the 343-foot elevation contour or 25 feet as measured from the reservoir's full pool elevation, whichever is greater. The purpose of this boundary amendment is to remove 3,650 acres of primarily residential lands from the project boundary, which the licensee identifies as being neither for, nor related to, project purposes. Areas necessary for project purposes, such as the project works and recreation sites, would be exempt from the proposed boundary change and remain within the project boundary.

A copy of the EA is attached to a Commission order titled ''Order Approving Change in Project Boundary,'' which was issued on February 15, 2005, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission(s website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–704 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–49–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Bluff Creek/Tomah Expansion Project and Request for Comments on Environmental Issues

February 15, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Bluff Creek/Tomah Expansion Project involving construction and operation of facilities by Northern Natural Gas Company (Northern) in Lafayette County, Wisconsin, and Fillmore County, Minnesota.[1] These facilities would consist of adding approximately 3.2 miles of 30-inch diameter pipeline at the Bluff Creek Interconnect, located at the terminus of Northern's East Leg pipeline system and increasing the horsepower (HP) at Northern's existing Chatfield compressor station. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Northern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

[1] Northern's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Summary of the Proposed Project

Northern proposes to construct and operate approximately 3.2 miles of 30-inch diameter pipeline in Lafayette County, Wisconsin at the Bluff Creek Interconnect terminus of Northern's East Leg pipeline system; and increase the horsepower (hp) at its existing Chatfield compressor station (CS) located in Fillmore County, Minnesota.

Northern also plans to install auxiliary above ground facilities (crossover with a shutoff valve, blow-down valve, and pipe and fittings) adjacent to the pipeline construction right-of-way at the end of the pipeline.

Northern's Chatfield CS upgrade would consist of replacing the existing 1,750 hp motor with a 2,500 HP compressor. The new compressor and various auxiliary equipment (lube oil pump, pulsation bottles, instrumentation controls) would be housed in a new building, approximately 50 feet by 40 feet, with acoustical walls and ceiling for noise attenuation. A new control building, approximately 25 feet by 12 feet, would also be installed to contain all electrical distribution, control functions, and office space. An additional 250 feet of pipe will be installed within the compressor station yard. The existing control building, containing the electrical distribution and controls for the existing compressor would remain in-place. The new compressor, auxiliary equipment, and control building would be located within Northern's existing Chatfield CS yard.

The work may require up to two pipe yards for pipe storage, staging areas and contractor yards during construction. The primary pipe yard site would be located at the beginning of the proposed pipeline extension in Lafayette County, Wisconsin. The other pipe yard site is an alternate and would be located within an existing river barge off-loading terminal on the Mississippi River in Jo Daviess County, Illinois.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 92.7 acres of land (including 42 acres for the alternative pipe yard). Following construction, about 18.9 acres would be maintained as operational right-of-way or facility site. The remaining 73.8 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission(s official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We,'' ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northern. This preliminary list of issues may be changed based on your comments and our analysis.

- The Galena River, a Wisconsin Natural Heritage Inventory Water, would be crossed by the pipeline.
- Three residences are located within 2,000 feet of the compressor upgrade location.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP05–49–000.
- Mail your comments so that they will be received in Washington, DC on or before March 17, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA/EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's e-Filing system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission(s Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–733 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 16, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12516–000.

c. *Date filed:* July 6, 2004.

d. *Applicant:* Edward T. Navickis.

e. *Name of Project:* Parshall Canal Project.

f. *Location:* On the North Fork of American River, in Placer County, California. The existing canal is owned by Pacific Gas and Electric Company.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward T. Navickis, P.O. Box 910, Penn Valley, CA 95946, (530) 432–9226.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A new powerhouse containing one generating unit with an installed capacity of 1,050 kW; (2) approximately 800 feet of new three phase power line that would tie into an existing 12 kva single phase line approximately 1,600 feet in length (The single phase line would be upgraded to three phase); and (3) appurtenant facilities. The project would have an annual generation of 4 gigawatt-hours, which would be sold to Pacific Gas & Electric Company.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–707 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 16, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12517–000.

c. *Date filed:* July 6, 2004.

d. *Applicant:* Edward T. Navickis.

e. *Name of Project:* Bear River Canal Project.

f. *Location:* On the Bear River Canal, in Placer County, California. The existing canal is owned by Pacific Gas and Electric Company.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward T. Navickis, P.O. Box 910, Penn Valley, CA 95946, (530) 432–9226.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project, using Pacific Gas & Electric Company's existing Bear River Canal and Halsey Forebay, would consist of: (1) An intake structure adjacent to the canal with an invert elevation of 1,760 feet; (2) a 200-foot-long, 72-inch-diameter buried penstock; (4) a powerhouse containing a generating unit with an installed capacity of 600 kilowatts; (5) a 200-foot-long, 12-kV transmission line; and (6) appurtenant facilities. The project would have an annual generation of 3.78 GWh, which would be sold to Pacific Gas & Electric Company or a power distributor.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–715 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 16, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12526–000.

c. *Date filed:* August 2, 2004.

d. *Applicant:* Edward T. Navickis.

e. *Name of Project:* Boca Power Project.

f. *Location:* On the Boca Reservoir, and the Little Truckee River, in Nevada County, California. The existing dam is owned by U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward T. Navickis, P.O. Box 910, Penn Valley, CA 95946, (530) 432–9226.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would use the Bureau Of Reclamation's Boca Dam and impoundment would consist of: (1) A proposed 8-foot-long, 50-inch-diameter steel penstock; (2) a proposed powerhouse containing one generating unit having a total installed capacity of 1.125 MW; (3) a proposed 2000-foot-long, transmission line; and (4) appurtenant facilities. The project would have an annual generation of 5 GWh, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–716 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 16, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12527–000.

c. *Date filed:* August 2, 2004.

d. *Applicant:* Edward T. Navickis.

e. *Name of Project:* Lake Pillsbury Project.

f. *Location:* On the Eel River, in Lake County, California. The existing dam is owned by Pacific Gas and Electric Company. The proposed project would develop additional capacity at the

already licensed Project No. 77 owned by Pacific Gas and Electric Company.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward T. Navickis, P. O. Box 910, Penn Valley, CA 95946, (530) 432–9226.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed would consist of: (1) An existing 805-foot-long, 138-foot-high, Concrete Gravity Scott Dam, (2) an existing reservoir having a surface area of 2,000 acres and storage capacity of 80,556 acre-feet with a normal water surface elevation of 1910 feet mean sea level, (3) reconfigured outlet works, (4) a proposed powerhouse containing a generating unit having an installed capacity of 2.5 megawatts, (5) a proposed 9-mile-long transmission line, and (6) appurtenant facilities. The project would have an annual generation of 15 GWh, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–717 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Approval of Financing Arrangement and Soliciting Comments, Motions To Intervene, and Protests

February 15, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Partial transfer of license and transfer of license.

b. *Project No.:* P–2669–039.

c. *Date Filed:* February 8, 2005.

d. *Applicants:* USGen New England, Inc., Bear Swamp Generating Trust No. 1 LLC, Bear Swamp Generating Trust No. 2 LLC, Bear Swamp Power Company LLC.

e. *Name of Project:* Bear Swamp.

f. *Location:* On the Deerfield River in Franklin and Berkshire Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants' Contact:* Amy S. Koch, Patton Boggs LLP, 2550 M Street, NW., Washington, DC 20037, (202) 457–6000.

i. *FERC Contact:* James Hunter at (202) 502–6086.

j. *Deadline for filing comments, protests, and motions to intervene:* March 4, 2005.

All documents (original and eight copies) should be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Application:* Bear Swamp Generating Trust No. 1 LLC, Bear Swamp Generating Trust No. 2 LLC, (the Trusts), USGen New England, Inc. (USGenNE) and Bear Swamp Power Company LLC (BSPC) tendered for filing an application for a two-step transfer of license. First, the Applicants seek the partial transfer of license from USGenNE and the Trusts, as joint licensees, to the Trusts and BSPC, as joint licenses. The Trusts and BSPC then seek approval for a subsequent transfer of license from the Trusts and BSPC to BSPC as sole licensee. The Trusts and BSPC also request that the Commission allow them to consummate the transaction without filing a second application for transfer of the license. BSPC and the Trusts also inform the Commission that there is a possibility that an affiliate of BSPC may operate the Project at the direction of BSPC for a period of time if BSPC has not received its market-based rate authorization from the Commission by the effective date of an interim operating arrangement among BSPC and the Trusts. They respectfully request that the Commission approve such an arrangement.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or by calling (202) 208–1371.

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.

m. Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and eight copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. E5–722 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–6–000 and –001]

Enbridge Pipelines (KPC); Notice of Rescheduling of Technical Conference

February 15, 2005.

Take notice that the Commission staff will convene a technical conference on Thursday, March 24, 2005, from 10 a.m. to 5 p.m. (e.s.t.), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This conference was originally scheduled for January 26, 2005.

The purpose of the conference is to address the negative deferred fuel account balance and surplus gas on Enbridge Pipelines (KPC) (Enbridge KPC). The Commission directed its staff to convene this technical conference in a December 22, 2004 order on rehearing and establishing technical conference.[1]

This case began on October 1, 2003, as a result of revised tariff sheets submitted by Enbridge KPC to adjust its fuel reimbursement percentages to reflect changes in its fuel usage and lost and unaccounted for gas (L&U). The revised tariff sheets proposed, among other things, a decrease in the fuel reimbursement percentages (FRPs) that became effective November 1, 2003. Enbridge KPC should be prepared to further explain its proposal, and address the concerns raised in the December 1, 2003, request for rehearing of Kansas Corporation Commission (KCC) and its October 27, 2004, response to Staff's August 27, 2004, data request. For further information regarding this conference please contact Lisa Long at (202) 502–8691 or *lisa.long@ferc.gov*.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. E5–726 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–3–000]

Promoting Regional Transmission Planning and Expansion To Facilitate Fuel Diversity Including Expanded Uses of Coal-Fired Resources; Notice of Technical Conference

February 16, 2005.

Take notice that the Federal Energy Regulatory Commission will host a technical conference on Friday, May 13, 2005, to identify regional solutions to promoting regional transmission planning, expansion and enhancement to facilitate fuel diversity including increased integration of coal-fired resources to the transmission grid. The technical conference will be held at the Charleston Marriott Town Center, 200 Lee Street East, Charleston, West

[1] Enbridge Pipelines (KPC), 109 FERC ¶ 61,346 (2004).

Virginia, 25301. The technical conference is scheduled to begin at 9 a.m. and end at approximately 5 p.m. (e.s.t.). The Commissioners will attend and participate.

The goal of the technical conference is to explore possible policy changes that would better accommodate, in particular, the increased participation of coal-fired energy in wholesale markets.[1] Topics may include:

- What are the experiences learned from the existing regional planning practices in the existing RTOs and ISOs, such as PJM and MISO, or other regional bodies such as the Rocky Mountain Area Transmission Study working group?
- What transmission infrastructure investments are needed to integrate new resources, including coal-fired, and what barriers stand in the way of getting them built?
- What actions can the Commission take to assist in intra- and inter-regional planning processes?
- What regional planning mechanisms, such as joint development of diverse resources at remote sites, or planning bodies can be created to promote fuel diversity, including the expansion of coal-fired resources?
- What reliability considerations inhibit or promote the expansion of transmission facilities to reach coal plants?

An agenda will be published at a later time.

Although registration is not a strict requirement, in-person attendees are asked to register for the conference on-line by close of business on May 10, 2005, at *http://www.ferc.gov/whats-new/registration/coal-05-13-form.asp*.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on ''FERC.'' If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

For more information about the conference, please contact Sarah McKinley at 202–502–8004, *sarah.mckinley@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–718 Filed 2–22–05; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission has held one conference accommodating intermittent resources, including wind, and will be holding additional related conferences for those resources, such as the upcoming workshop being held in Portland, Oregon.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7876–3]

EPA Science Advisory Board Staff Office; Request for Nominations of Experts for the Arsenic Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Requesting the nomination of experts for the Science Advisory Board (SAB) Arsenic Review Panel.

DATES: Nominations should be submitted by March 16, 2005, per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Ms. Vivian Turner, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 343–9697; by fax at (202) 233–0643; or via e-mail at *turner.vivian@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: Inorganic arsenic is found naturally in the environment and it is typically present in soil and water at some determinate level. Sources of human exposure to inorganic arsenic include drinking water, diet, air and anthropogenic sources such as wood preservatives and industrial wastes. Additionally, humans are exposed to organic arsenicals when they are used as pesticides (*e.g.*, monomethylarsenic acid and dimethylarsenic acid or cacodylic acid). The EPA is currently completing its draft assessment of potential human health effects associated with arsenic compounds. EPA's Office of Research and Development (ORD) has requested the EPA Science Advisory Board (SAB) to conduct a review of this assessment.

The EPA Science Advisory Board (SAB) was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB and the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) will establish a panel to conduct a review of the Agency's risk assessment for arsenic. The review panel will be formed from members of the Science Advisory Board, the EPA FIFRA SAP, and other experts as determined to be necessary. This panel will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies. Upon completion, the panel's report will be submitted to the SAB for final approval for transmittal to the EPA Administrator.

Availability of the Review Materials: The EPA draft assessment to be reviewed by the SAB Panel will be made available by the Office of Research and Development. For questions and information concerning the review materials, please contact Dr. Reeder Sams, at (919) 541–0661, or *sams.reeder@epa.gov*.

Request for Nominations: The SAB Staff Office is requesting nominations of recognized experts with one or more of the following areas of expertise, especially with respect to the potential human health effects of arsenic and arsenic compounds: human physiology and exposure; epidemiology; toxicology, including mechanisms of toxicity for cancer; metabolism; pharmacokinetics and modeling; dose-response assessment; analytical chemistry as applied to living organisms and environmental media; risk assessment; and biostatistics.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate individuals qualified in the areas of expertise described above to serve on the SAB Arsenic Review Panel. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board which can be accessed through a link on the blue navigational bar on the SAB Web site at: *http://www.epa.gov/sab*. To be considered, all nominations must include the information requested on that form.

Anyone who is unable to submit nominations using this form and any questions concerning any aspects of the nomination process may contact the DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than March 16, 2005. Any questions concerning either this process or any other aspects of this

notice should be directed to the DFO. The process for forming a SAB panel is described in the Overview of the Panel Formation Process at the Environmental Protection Agency, Science Advisory Board (EPA–SAB–EC–COM–02–010), on the SAB Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf.*

From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast''), the SAB Staff Office will develop a smaller subset (known as the ''Short List'') for more detailed consideration. The Short List will be posted on the SAB Web Site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Panel.

For the SAB, a balanced panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of expertise and experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual Panel member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Prospective candidates will be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

Dated: February 14, 2005.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–3449 Filed 2–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0418]; FRL–7700–1]

Methyl Eugenol; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of February 2, 2005, concerning EPA's Tolerance Reassessment Decision (TRED) for the pesticide Methyl Eugenol. This document is being issued to correct typographical error in the DATES section of the previous **Federal Register** Notice. The earlier text read ''Comments, identified by docket ID number OPP–2004–0418, must be received on or before February 3, 2005.''The date of ''February 3, 2005'' was a typographical error.

FOR FURTHER INFORMATION CONTACT: Nathan Mottl, Special Review and Reregistration Divison, (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0208; e-mail address:*mottl.nathan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0418. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Does this Correction Do?

In the **DATES** section of FR Doc. 05–1865, published in the **Federal Register** of February 2, 2005 (70 FR 5440)(FRL–7693–9) the number of days for submission of comments should have been computed as 60 days after date of publication instead of ''the date after date of publication,'' which was computed to be February 3, 2005. This document corrects the **DATES** section as follows and adds additional time for submission of comments because of this error.

On page 5440, the **DATES** section should read:

''**DATES:** Comments, identified by docket ID number OPP–2004–0418, must be received on or before April 25, 2005.''

List of Subjects

Environmental protection, pesticides, and pests.

Dated: February 14, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–3447 Filed 2–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0037; FRL–7698–7]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period October 1, 2004 to Decmeber 31, 2004 to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification number OPP–2005–0037. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

California

Environmental Protection Agency, Department of Pesticide Regulation
Specific: EPA authorized the use of thiophanate methylin mushroom cultivation to control green mold; October 28, 2004 to October 27, 2005. Contact: (Andrea Conrath)
EPA authorized the use of pyriproxyfen on strawberry to control silverleaf whiteflly; December 13, 2004 to December 12, 2005. Contact: (Andrea Conrath)

Colorado

Department of Agriculture
Specific: EPA authorized the use of the formulated product ApiLife VAR containing thymol, eucalyptus oil, and

L-menthol in beehives to control varroa mites; December 3, 2004 to December 1, 2005. Contact: (Barbara Madden)

Florida

Department of Agriculture and Consumer Services
Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; January 19, 2005 to January 18,2006. Contact: (Barbara Madden)
EPA authorized the use of the formulated product ApiLife VAR containing thymol, eucalyptus oil, and L-menthol in beehives to control varroa mites; December 29, 2004 to December 1, 2005. Contact: (Barbara Madden)

Georgia

Department of Agriculture
Specific: EPA authorized the use of indoxacarb on collards to control diamondback moth; November 4, 2004 to November 3, 2005. Contact: (Andrea Conrath)
EPA authorized the use of fenbuconazole on blueberries to control mummyberry disease; November 18, 2004 to July 1, 2005. Contact: (Andrea Conrath)

Idaho

Department of Agriculture
Specific: EPA authorized the use of flufenacet on wheat to control Italian ryegrass; October 20, 2004 to December 31, 2004. Contact: (Andrew Ertman)

Kentucky

Department of Agriculture
Specific: EPA authorized the use of the formulated product ApiLife VAR containing thymol, eucalyptus oil, and L-menthol in beehives to control varroa mites; December 3, 2004 to December 1, 2005. Contact: (Barbara Madden)

Minnesota

Department of Agriculture
Quarantine: EPA authorized the use of trifloxystrobin on soybeans to control soybean rust; December 13, 2004, to December 1, 2007. Contact: (Andrew Ertman)

New York

Department of Environmental Conservation
Specific: EPA authorized the use of the formulated product ApiLife VAR containing thymol, eucalyptus oil, and L-menthol in beehives to control varroa mites; December 29, 2004 to December 1, 2005. Contact: (Barbara Madden)

North Carolina

Specific: EPA authorized the use of the formulated product ApiLife VAR containing thymol, eucalyptus oil, and L-menthol in beehives to control varroa mites; December 29, 2004 to December 1, 2005. Contact: (Barbara Madden)

Ohio

Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; December 1, 2004, to March 1, 2007. Contact: (Andrew Ertman)

Oregon

Department of Agriculture
Specific: EPA authorized the use of thiophanate methyl in mushroom cultivation to control green mold; October 19, 2004 to October 18, 2005. Contact: (Andrea Conrath)
EPA authorized the use of flufenacet on wheat to control Italian ryegrass; October 20, 2004 to December 31, 2004. Contact: (Andrew Ertman)

South Carolina

Clemson University
Specific: EPA authorized the use of the formulated product ApiLife VAR containing thymol, eucalyptus oil, and L-menthol in beehives to control varroa mites; December 3, 2004 to December 1, 2005. Contact: (Barbara Madden)

South Dakota

Department of Agriculture
Quarantine: EPA authorized the use of trifloxystrobin on soybeans to control soybean rust; December 13, 2004, to December 1, 2007. Contact: (Andrew Ertman)

Texas

Department of Agriculture
Crisis: On December 21, 2004, for the use of triflumizole on parsley, dandelion, Swiss chard, collards, kale, kohlrabi, mustard greens, napa cabbage, and cilantro to control powdery mildew. This program is expected to end on October 1, 2005. Contact: (Libby Pemberton)
Specific: EPA authorized the use of fenbuconazole on grapefruit to control greasy spot disease; November 5, 2004 to November 4, 2005. Contact: (Andrea Conrath)
EPA authorized the use of the formulated product ApiLife VAR containing thymol, eucalyptus oil, and L-menthol in beehives to control varroa mites; December 3, 2004 to December 1, 2005. Contact: (Barbara Madden)

Virginia

Department of Agriculture and Consumer Services
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; November 15, 2004, to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; November 15, 2004, to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of tebuconazole on soybeans to control soybean rust; November 15, 2004, to March 1, 2007. Contact: (Andrew Ertman)

B. Federal Departments and Agencies

Agriculture Department
Animal and Plant Health Inspector Service
Quarantine: EPA authorized the use of carbaryl on imported flightless birds to control exotic ectoparasites; November 15, 2004, to November 15, 2007. Contact: (Andrew Ertman)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 9, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–3446 Filed 2–22–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0023; FRL–7698–8]

Dichlormid; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0023, must be received on or before March 25, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Keri Grinstead, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(703) 308–8373; e-mail address: *grinstead.keri@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0023. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0023. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov,

Attention: Docket ID number OPP–2005–0023. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0023.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0023. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Dow AgroSciences LLC, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow AgroSciences LLC

PP 4F6858

EPA has received a pesticide petition (PP 4F6858) from Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of dichlormid in or on the raw agricultural commodity corn (forage, grain, stover) at (0.05) parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residue in plants is adequately understood based on a study depicting the metabolism of dichlormid in corn plants. The metabolism of dichlormid in corn is extensive and occurs via two metabolite pathways. In one pathway dichlormid is de-chlorinated and oxidised to generate N,N-diallyl glycolamide. An alternative pathway is the loss of an allyl group followed by oxidation to form dichloroacetic acid. There is also extensive incorporation into natural constituents. EPA has previously determined that dichlormid is the residue of concern for tolerance setting purposes.

2. *Analytical method*. An adequate enforcement method for residues of dichlormid in corn has been developed and validated by the Analytical Chemical Laboratory (ACL) of EPA. Analysis is carried out using gas chromatography with nitrogen selective thermionic detection. The limit of determination is 0.01 ppm.

3. *Magnitude of residues*. Fifteen (15) field trials in field corn with dichlormid were submitted and reviewed. The submitted data support the tolerance

level of 0.05 parts per million (ppm) for all corn commodities.

B. Toxicological Profile

1. *Acute toxicity*. Dichlormid has low acute toxicity as indicated by a range of studies including: a rat acute oral study with an LD_{50} of 2,816 mg/kg for males and 2,146 mg/kg for females, respectively; a rat acute dermal study with an LD_{50} of >2,040 mg/kg, and a rabbit acute dermal study with an LD_{50} of >5,000 mg/kg; a rat inhalation study with an LD_{50} of >5.5 milligrams/Liter (mg/L); a primary eye irritation study in the rabbit showing mild ocular irritation; a primary dermal irritation study in the rabbit showing severe skin irritation; and a skin sensitization study which showed that dichlormid was a mild skin sensitizer in the guinea pig.

An acute neurotoxicity study was conducted in rats and a single oral administration of 1,500 mg dichlormid/kg was not associated with any histopathological changes and no functional changes indicative of neurotoxicity. The NOAEL for neurotoxicity in this study was 1,500 mg dichlormid/kg.

2. *Genotoxicty*. Dichlormid was not mutagenic in a range of *in vitro* assays, including the *Salmonella/microsome* (Ames) assay, the human *lymphocyte cytogenetic* assay (both assays with and without metabolic activation), and an unscheduled DNA synthesis (DNA repair) assay in hepatocytes. In the L5178Y mouse lymphoma assay, small increases in mutant frequency were observed only at cytotoxic concentrations, and were not considered to be significant. *In vivo*, dichlormid was negative in the mouse micronucleus test and in the rat unscheduled DNA synthesis assay, when tested at the maximum tolerated dose.

3. *Reproductive and developmental toxicity*. In a developmental toxicity study, rats were dosed orally by gavage with 0, 10, 40 or 160 mg/kg/day. The no observed adverse effect level (NOAEL) for maternal toxicity was 10 mg/kg/day based on a reduction in body weight gain and food consumption at 40 and 160 mg/kg/day. The developmental NOAEL was determined to be 40 mg/kg/day based on marginal foetotoxic effects, including extra 14th ribs probably due to maternal stress, slight sternebra misalignment and some centra unossified, at 160 mg/kg/day.

In a developmental toxicity study, rabbits were dosed orally by gavage with 0, 5, 30 or 180 mg/kg/day. The lowest observed effect level (LOAEL) for both maternal and fetotoxicity was 180 mg/kg/day characterized by reduced body weight gain and food consumption, and a small increase in post-implantation loss, an increased number of early resorptions, a decreased number of fetuses per litter and evidence of fetotoxicity (partial ossification and misshapen/fused sternebrae). The NOAEL for both maternal and developmental toxicity was 30 mg/kg/day.

In a two-generation reproduction study in rats fed diets of 0, 15, 75 and 500 ppm of dichlormid, dietary administration of 500 ppm dichlormid (48.5 mg/kg/day) for two successive generations resulted in decreased body weights and increased liver weights in parents and pups of both generations. There were no effects on reproductive performance or reproductive organs at dose levels up to and including 500 ppm dichlormid. There were no toxicologically significant effects in parents or offspring at a dose level of 75 ppm dichlormid (>7.4 mg/kg/day).

4. *Subchronic toxicity*. In a subchronic toxicity study, groups of 12 male and 12 female Wistar-derived alpk:ApfSD rats were fed diets containing 0, 20, 200 or 2,000 ppm dichlormid for 90 days. Significant reductions in body weight gain and food consumption were seen in male and female rats receiving 2,000 ppm dichlormid, and to a lesser degree, in females at 200 ppm. The liver was identified as the principal target organ (enlargement increased APDM activity in females, centrilobular hypertrophy, increased bile duct pigmentation) in the 2,000 ppm group. The NOAEL was 20 ppm (equivalent to approximately 1.8 mg/kg/day - see discussion under Chronic toxicity, Section B.5.), and the LOAEL was 200 ppm based on reduced body weight gain and food consumption, and a marginal increase in APDM activity in females and liver enlargement in males.

In a 90–day dog feeding study, previously submitted and reviewed by EPA, animals were dosed (4 dogs/sex/dose) at 0, 1, 5, 25 and 50 mg/kg/day. The NOAEL was 5 mg/kg/day, and the LOAEL 25 mg/kg/day based on reduced body weight gain, increased liver weight and degenerative changes involuntary muscle with an associated increase in plasma creatine kinase and alkaline phosphatase activity between 6 and 10 weeks.

In a 14–week rat inhalation study, groups of 18 male and 18 female Sprague-Dawley CD rats were subjected to a whole body exposure of 0, 2.0, 19.9 or 192.5 mg/m3 for 6 hours per day, 5 days per week. The NOAEL was 2.0 mg/m3 based on histopathologic tissue alterations to the nasal olfactory epithelium at 19.9 and 192.5 mg/m3, suggesting that dichlormid was a mild irritant to the nasal cavity. An increase in relative liver, kidney and lung weights at 19.9 and 192.5 mg/m3 was not supported by gross or histopathological observations.

A subchronic neurotoxicity study was conducted in rats and groups of male and females rats were fed diets containing 0, 100, 250, or 750 ppm dichlormid for 90–days. There were no compound related effects in either sex throughout the study and there was no evidence of neurotoxicity. The NOEL for neurotoxicity was 750 ppm (55.4 mg/kg bwt/day for males, 61.2 mg/kg bodyn weight (bwt/day for females).

5. *Chronic toxicity*. A 1–year chronic toxicity study was conducted in dogs with a NOAEL of 5 mg dichlormid/kg bwt/day for both males and females. The LOAEL from this study was 20 mg dichlormid/kg bwt/day based on minimal muscle fiber degeneration and slight to moderate vacuolation of the adrenal cortex. Adaptive changes consisting of increased plasma alkaline phosphatase activity and increased liver weights, were present at this dose level. There were no other signs of overt toxicity.

Rats (64/sex/group) were fed diets containing 0, 20, 100 or 500 ppm dichlormid (0, 1.3, 6.5, 32.8 mg/kg/day for males and 0, 1.5, 7.5, 37.1 mg/kg/day for females) for up to 2 years. At 500 ppm in both males and females, there were treatment related effects on growth and food consumption, minor reductions in plasma triglycerides, and in males, increased liver weights accompanied by hepatocyte vaculolation and pigmentation effects. In females, there was a slight overall increase in malignant tumors, primarily *uterine adenocarcinomas*, at 500 ppm, but this specific increase was within the spontaneous incidence observed in historical data. It was concluded that there was no evidence of oncogenicity associated with dichlormid treatment. The NOAEL for chronic toxicity was 100 ppm (6.5 and 7.5 mg/kg/day for males and females, respectively).

In an 18–month oncogenicity study, mice (55/sex/group) were fed dichlormid at doses of 0, 10, 50 or 500 ppm (0, 1.4, 7.0, 70.7 mg/kg for males and 0, 1.84, 9.2, 92.4 mg/kg for females). At 500 ppm, there was a slight increase in mortality for females from week 64 onward, and body weights and food utilization were reduced in males, and to a lesser extent, in females. Also, mice fed 500 ppm dichlormid showed non-neoplastic changes which were minor and consisted of changes in severity or incidence of common spontaneous findings. Based on these effects, the

chronic NOAEL was 50 ppm (7.0 and 9.2 mg/kg/day for males and females, respectively). There was a marginal increase in Harderian gland adenomas in males at 500 ppm, but this was considered to reflect the variable spontaneous tumor rate seen in this strain and sex of mouse. It was concluded, there was no evidence of oncogenicity associated with dichlormid treatment.

Based on available chronic toxicity data, the RfD for dichlormid is 0.07 mg/kg/day. This RfD is based on the 2–year feeding study in rats with a NOAEL of 7 mg/kg/day. An uncertainty factor of 100 was used to account for interspecies extrapolation and intraspecies variability. The 2–year rat study is consistent with, but supersedes the 90–day rat study. The 2–year rat of NOAEL of 7 mg/kg/day lies between 1.8 and 18 mg/kg/day derived from the NOAEL and LOAEL figures of 20 and 200 ppm, respectively, for the most recent 90–day rat study. Thus, the overall NOAEL in the rat for both chronic and subchronic exposure should be regarded as 7 mg/kg/day. Based on the proposed Guidelines for Carcinogenic Risk Assessment (July 1999), dichlormid is not likely to be a human carcinogen, and a margin of exposure (MOE) approach should be used for human risk assessment.

6. *Animal metabolism*. Dichlormid was well absorbed, extensively metabolized and eliminated mainly in the urine within 24 hours. A significant proportion of the dose, up to 11%, was exhaled as CO2. Two routes of biotransformation have been identified. One route involved the formation of an alcohol N,N-diallylglycolamide before subsequent oxidation to N,N-diallyloxamic acid, a major metabolite present in the urine and feces of both sexes. N,N-diallylglycolamide also undergoes further biotransformation to minor dechlorinated metabolites. In the second metabolic pathway, dichloroacetic acid present in the urine of both sexes is formed either directly from dichlormid or indirectly by transformation of N-allyl-2,2-dichloro-N-(2,3-dihydroxypropyl)acetamide. Entero- hepatic recirculation plays a major role in the distribution, metabolism and excretion of dichlormid. The elimination as CO2, the even elimination in urine over the first 24 hours, and wide distribution of retained radioactivity indicates some incorporation into endogenous metabolic processes.

7. *Metabolite toxicology*. No unique plant or soil metabolites have been identified that warrant a separate toxicological assessment.

8. *Endocrine disruption*. There is no overall trend in the toxicology database that indicates that dichlormid would have endocrine disrupting activity. The mammalian and ecotoxicology databases do not indicate significant adverse effects associated with endocrine disrupter activity.

C. Aggregate Exposure

1. *Dietary exposure—i. Food*.In conducting a chronic dietary risk assessment, reference is made to the conservative assumptions made by EPA in establishing dichlormid time-limited tolerances on March 27, 2000 (65 FR 16143) (FRL–6498–7), 100% crop treated (CT), and that all commodities contain residues at the tolerance or proposed tolerance. The analysis was determined using the Novigen Dietary Exposure Evaluation Model (DEEM Version 6.2) software and the United States Department of Agriculture (USDA) Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) survey that was conducted from 1994 through 1996.

ii. *Drinking water*. Dichlormid is very rapidly degraded in soil (laboratory measured aerobic half-life of 8 days) and applied at a maximum rate of 0.5 lb/acre, so despite only exhibiting moderate adsorption to soil (Koc 36–49), the leaching potential for dichlormid to reach groundwater is expected to be low. The impact of the interactive processes of adsorption and degradation on leaching have been assessed using EPA mathematical models of pesticide movement in soil. Drinking water estimate concentrations (DWEC) were calculated for groundwater using Screening Concentration in Groundwater (SCI-GROW) modeling and surface water estimate concentrations were calculated using Generic Estimated Environmental Concentration (GENEEC) modeling. These models predict a groundwater concentration of 0.05 ppb and surfacewater concentrations of 27.3 ppb for an instantaneous peak, and 26.9 ppb for a 56–day average. However, the Interim Agency policy allows the average 56–day GENEEC values to be divided by 3 (9.0 ppb) to obtain a value for chronic risk assessments. Drinking water levels of concern (DWLOC) were calculated for both chronic and acute exposure. As stated in the March 27, 2000 final rule: ''the modeled groundwater and surfacewater concentrations are less than the DWLOCs for dichlormid in drinking water for acute and chronic aggregate exposures. Thus, the Agency is able to screen out dichlormid drinking water risks''. Dow AgroSciences LLC does not expect exposure to dichlormid residues in drinking water to be a concern, as a result of the increased exposure pattern.

2. *Non-dietary exposure*. The general population is not expected to be exposed to dichlormid through non-dietary routes since dichlormid is used only on agricultural crops and is not used in or around the home.

3. *Cumulative effects*. The potential for cumulative effects of dichlormid and other substances that have a common mechanism of toxicity have been considered. There is no reliable information to suggest that dichlormid has any toxic effects that arise from toxic mechanisms common to other substances. Therefore, a consideration of common mechanism and cumulative effects with other substances is not appropriate for dichlormid.

D. Safety Determination

1. *U.S. population*—i. *Chronic risk*. Using the conservative exposure assumptions described earlier, and based on the completeness and reliability of the toxicity data base for dichlormid, the theoretical maximum residue concentration (TMRC) for the general U.S. population is calculated to be 0.0009 mg/kg/day, or 4.1% of the cPAD (0.0022 mg/kg/day). The most highly exposed subgroup are children aged 1–6 years with a TMRC of 0.000211 mg/kg/day, or 9.6% of the cPAD. As EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health, Dow AgroSciences LLC believes that there is a reasonable certainty that no harm will result from aggregate exposure to dichlormid residues.

ii. *Acute risk*. The acute toxicity of dichlormid is low, and there are no concerns for acute-dietary, occupational or non-occupational exposures to dichlormid.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of dichlormid, data from developmental toxicity studies in the rat and rabbit have been considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. There was no evidence to suggest that dichlormid was developmental toxicant in either the rat or rabbit. It was also observed, that there was no risk below maternally toxic doses as the NOAEL for developmental effects in the rat was 40 mg/kg/day, compared to the maternal NOAEL of 10

mg/kg/day; and in the rabbit study, the NOEL for both maternal and developmental effects was 30 mg/kg/day. EPA has previously concluded, that the additional 10x safety factor should be retained due to the qualitative evidence of increased susceptibility demonstrated following *in utero* exposure in the prenatal developmental toxicity in rabbits and an incomplete toxicity data base. It should be noted that in the rabbit developmental toxicity study, the LOAEL for both maternal and developmental toxicity was 180 mg/kg/day. The effects on resorptions at this dose were observed in dams which showed an average weight loss (–3.8g) during the treatment period compared with an average weight gain in controls of 272g. Also, a multigeneration study has now been completed, and therefore, Dow AgroSciences LLC believes that an additional safety factor should no longer be necessary.

Additional uncertainty factors are not warranted for the safety of infants and children as reliable data support the appropriate use of a 100–fold uncertainty factor (MOE) to account for interspecies extrapolation and intraspecies variability. However, using the conservative exposure assumptions above for the determination in the general population, it is concluded that, the percentage of cPAD that will be utilized by aggregate exposure to dichlormid is 9.6% for children aged 1–6 years (the group at highest risk). Therefore, based on the completeness and reliability of the toxicity data base and the conservative exposure assessment, Dow AgroSciences LLC concludes, that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to dichlormid residues.

E. International Tolerances

There is neither a codex proposal nor Canadian or Mexican limits for residues of dichlormid in corn commodities.

[FR Doc. 05–3361 Filed 2–22–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–270]

Media Bureau Implements Mandatory Electronic Filing of FCC Form 321 via COALS

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this Document the Media Bureau announces mandatory electronic filing via the Cable Operations and Licensing System (COALS) for FCC Form 321, Aeronautical Frequency Notification.

DATES: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Lance at (202) 418–7000.

SUPPLEMENTARY INFORMATION: The Commission's Public Notice, released February 2, 2005. The complete text of the Public Notice and related Commission documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The Public Notice and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. The Public Notice and related documents are also available on the Internet at the Commission's Web site: *http://www.fcc.gov/Daily_Releases/Daily_Business/2005/db0202/DA–05–270A1.pdf*.

The Media Bureau announces mandatory electronic filing via the Cable Operations and Licensing System (COALS) for FCC Forms 321, Aeronautical Frequency Notification. Mandatory electronic filing will commence on September 1, 2005. Paper versions of these forms will not be accepted for filing after August 31, 2005. The Commission will consider waivers where filers can show that electronic filing would cause them hardship. Users can access the electronic filing system for these forms via the Internet from the Commission's Web site at *http://www.fcc.gov/coals*. Instructions for use of the COALS and assistance are available from *http://www.fcc.gov/coals*. under ''download instructions.'' Internet access to the COALS public access system requires a user to have a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later. For technical assistance using the system or to report problems, please contact the Media Bureau, Engineering Division at (202) 418–7000 or *COALS_help@fcc.gov*.

Federal Communications Commission.

John P. Wong,

Chief, Engineering Division, Media Bureau.

[FR Doc. 05–3431 Filed 2–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 18, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. KNBT Bancorp, Inc., Bethlehem, Pennsylvania; to acquire Northeast Pennsylvania Financial Corp., Hazleton, Pennsylvania, and thereby indirectly acquire First Federal Bank, Hazleton, Pennsylvania, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, February 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–3416 Filed 2–22–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through February 3, 2007.

For information, contact Roger Rosa, Ph.D., Executive Secretary, Board of Scientific Counselors, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, of the Department of Health and Human Services, CDC/Washington Office, HHH Building, 200 Independence Ave, SW., Room 715H, MS P12, Washington, DC, 20201—telephone (202) 205–7856 or fax (202) 260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 16, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–3410 Filed 2–22–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps Uniform Data System (OMB No. 0915–0232): Revision

The National Health Service Corps (NHSC), managed by the Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The NHSC needs to collect data on its programs to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives, the NHSC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The following information will be collected from each site: services offered and delivery method; users by various characteristics; staffing and utilization; charges and collections; receivables, income and expenses; and managed care.

The estimated burden is as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Universal Report	1200	1	27	32,400

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 16, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–3426 Filed 2–22–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Nurse Practitioner and Nurse-Midwifery Education Program Guidelines

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final Nurse Practitioner and Nurse-Midwifery Education Program Guidelines.

SUMMARY: On November 3, 2003, the Health Resources and Services Administration (HRSA) published for comment proposed revisions to the Nurse Practitioner and Nurse-Midwifery Education Program Guidelines (Guidelines) for use in the Advanced Education Nursing Grant Program. HRSA has considered the comments received and is publishing the final Guidelines with responses to the comments.

DATES: These Guidelines are effective immediately.

FOR FURTHER INFORMATION CONTACT: Irene Sandvold, Division of Nursing, Bureau of Health Professions (BHPr), HRSA, Room 9–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6333.

SUPPLEMENTARY INFORMATION: On November 3, 2003, HRSA published in

the **Federal Register** (68 FR 62299) for comment proposed revisions to the Nurse Practitioner (NP) and Nurse-Midwifery Education Program Guidelines for use in the Advanced Education Nursing Grant Program under sec. 811 of the Public Health Service Act. The public comment period on the proposed guidelines closed on December 3, 2003. The Department received comments from four professional nursing associations. These comments, HRSA's responses to the comments, and the final Guidelines are set forth below, according to the applicable headings of the Guidelines. Copies of the final Guidelines are available at *http://www.bhpr.hrsa.gov/nursing* and from the Division of Nursing at the above address.

Summary of the Comments and Response to the Comments Overview—Nurse Practitioner Education Program

Core Competencies and Specialty Competencies

One commenter stated that the Guidelines should require all NP graduates to meet the *core* competencies, as well as the national *specialty* competencies in an area of specialty preparation. Another commenter suggested that the Guidelines should be revised to clearly require NP graduates in specialty areas, such as psychiatric-mental health NP and acute care NP, to meet any applicable national specialty competencies, in addition to meeting the national NP core competencies.

We agree with these comments and have revised this section to clarify that all NP graduates are expected to meet the national core competencies (Advanced Nursing Practice: Curriculum Guidelines and Program Standards for Nurse Practitioner Education; and, the Criteria for Evaluation of Nurse Practitioner Programs, A Report of the National Task Force on Quality Nurse Practitioner Education), in addition to meeting any applicable national specialty competencies, such as those established in Nurse Practitioner Primary Care Competencies in Specialty Areas: Adult, Family, Gerontological, Pediatric, and Women's Health.

Consistency With Master's Education Guidelines

One commenter requested that the Guidelines add the expectation that Nurse Practitioner programs be consistent with the American Association of Colleges of Nursing's (AACN) Essentials of Master's Education for Advanced Practice Nursing. This document provides a framework for educators in designing and assessing masters' nursing education programs for advanced practice nurses.

We believe that the provision in the Advanced Education Nursing Program application guidance requiring documentation that the program for which financial support is requested meets national standards and guidelines available for the specialty sufficiently addresses this requirement. However, for clarity, we revised the Overview section to address this point.

Applicability of the Guidelines to Primary Care Nurse Practitioner and Specialties related to Acute Care Nurse Practitioner Education

Two commenters recommended that the Guidelines address and be made applicable to all NP training programs, whatever their specialty focus, rather than applying just to programs preparing NPs solely in primary health care. They pointed out that programs must prepare NPs to deliver both primary care and acute care services within a variety of health care settings and that NP education programs need the flexibility to respond to the rapidly changing health care system.

We agree with these comments stating that the Guidelines should address NP education programs that prepare NPs to practice across a continuum of settings and to care for individuals in various stages of health and illness. Since the Guidelines were originally published in 1977, the health system has gone through tremendous change. Formerly, the Guidelines only applied to programs preparing NPs in primary health care delivered in a variety of settings to various segments of the population. NP education programs that focus on specialties other than primary health care were supported under the Advanced Education Nursing authority but were not required to meet the Guidelines.

We agree that all NP programs funded under sec. 811 should meet the Guidelines and have revised the Guidelines accordingly. The Guidelines now apply to *all* programs funded under sec. 811 for the education of NPs and nurse-midwives. This includes programs that prepare NPs to:

- Practice in a wide range of settings, such as acute care hospitals, long term care facilities, and community-based clinics;
- Serve various segments of the population, such as adult, family, gerontological, pediatric, and women; and
- Focus on specialties in addition to primary care, such as acute care and psychiatric mental health.

Length of the Program

One commenter requested the deletion of the minimum length of the program requirement. Since this funding is not available for short continuing education programs, we have retained the minimum length requirement to notify potential applicants of this eligibility requirement. However, this requirement should not hinder innovative programs. Although the program, itself, must meet the minimum length requirement, the individual participants of the program have the flexibility to complete the program in a shorter time using strategies such as entering with some prerequisites or requirements already completed or by achieving competency in a shorter time frame.

Student Enrollment

One commenter suggested that the student eligibility requirement for Nurse-Midwifery programs be revised to delete the requirement of a registered nurse license to make eligible students who study nursing after receiving a baccalaureate degree in another field in accelerated intensive second degree nursing programs. Deletion of a registered nurse license requirement is not necessary to meet these concerns because these accelerated, intensive second degree nursing programs with a graduate specialty in nurse-midwifery are already eligible. The section entitled ''Student Enrollment'' includes as eligible a program leading to a graduate degree in nursing, in which the students are licensed to practice nursing ''at or prior to the time of completion of a program.''

Faculty Qualifications

One commenter requested that HRSA add a ''nurse practitioner'' to the list of educators contained in the first sentence in the Faculty Qualifications section. Another commenter suggested that faculty with particular experience in the same specialty focus as the track should lead curriculum development.

These comments express the intent of the Guidelines as originally issued and as proposed. We concur with these comments and, for improved clarity, we have revised this section as requested.

Definition of Nurse Practitioner

One commenter stated that the definition of a nurse practitioner is inconsistent with the definition of ''nurse practitioner or nurse-midwifery program'' due to the omission of the role

of the NP in the acute care setting. The commenter suggested revising the definition of NP to include the role of the nurse practitioner in the specialty practice of acute care in the acute care setting.

We believe that all NPs need the orientation to primary health care and health promotion that is included in the nurse practitioner core competencies, including NPs who are prepared for specialty practice in areas such as acute care and psychiatric mental health. Therefore, we revised the definition of NP to clarify this point.

One commenter recommended that the definition of NP include specifically the performance and supervision of laboratory tests.

We concur with this comment and have revised the definition of NP accordingly.

Definition of Post-Master's Nurse Practitioner or Nurse-Midwifery Education Program

One commenter emphasized the importance of documentation of the academic credits and certificate of completion for a post-master's nurse practitioner or nurse-midwifery education program on the academic transcript. We concur with this comment and have revised the definition of post-master's program to address this point.

Definition of Primary Care

One commenter suggested that to reflect the evolving education and practice of NPs, the definition of primary care be clarified to reference the delivery of primary care in a variety of settings, including homes and ambulatory facilities, long-term care facilities, acute care and other health care settings. The commenter interpreted the lack of reference to specialty areas of NP practice, such as acute care, palliative care, rehabilitation, and psychiatric mental health, in the definition of primary care as limiting the programs eligible for grant support under this authority.

The definition of primary care in the Guidelines is universal in application. Since it applies to the delivery of primary care in *every* setting, it is unnecessary to specify any particular settings. In addition, the reference to any specific settings could be confusing by implying a limitation in application. We understand that due to changing demands in the health care delivery system, increasing numbers of nurse practitioners are providing specialty health care services in acute, critical and long-term care settings. Innovative programs that prepare NPs in specialty areas to meet these emerging population needs are eligible for support; however, these programs must now be consistent with the Guidelines and meet the core competencies.

Accordingly, HRSA has revised the proposed Guidelines to read as follows:

Federal Nurse Practitioner and Nurse-Midwifery Education Program Guidelines

Background

The Federal Nurse Practitioner and Nurse-Midwifery Education Program Guidelines (the Guidelines) promote the quality of nurse practitioner and nurse-midwifery programs funded by the Health Resources and Services Administration (HRSA) and implement section 811(c) of the PHS Act, which states that:

> Nurse Practitioner and nurse-midwifery programs eligible for support under this section are educational programs for registered nurses (irrespective of the type of school of nursing in which the nurses received their training) that—
>
> (1) Meet guidelines prescribed by the Secretary, and
>
> (2) Have as their objective the education of nurses who will upon completion of their studies in such programs be qualified to effectively provide primary health care, including primary health care in homes and in ambulatory care facilities, long-term care facilities, acute care, and other healthcare settings.

The Guidelines were originally issued in 1977 as an appendix to regulations implementing the corresponding grant programs. In 2001, as an effort to simplify government procedures, HRSA issued a final rule (66 FR 44981) that rescinded and removed most of the Bureau of Health Professions (BHPr) regulations, including the Guidelines. In the November 3, 2003, **Federal Register**, HRSA published revised Guidelines for comment. In 2005, February 23, 2005, HRSA published in the **Federal Register** final revised Guidelines that include appropriate changes.

Overview

Master's nurse practitioner and nurse-midwifery education programs are expected to be consistent with the most current editions of the American Association of Colleges of Nursing's (AACN's) Essentials of Master's Education for Advanced Practice Nursing (available from AACN at *http://www.aacn.nche.edu*.

Nurse practitioner education programs funded under this authority are graduate level programs that can provide evidence of accreditation from a recognized body or by a State agency, approved for such purpose by the U.S. Department of Education. In addition, programs are expected to be consistent with the most current editions or most current sections of Advanced Nursing Practice: Curriculum Guidelines & Program Standards for Nurse Practitioner Education; and, Criteria for Evaluation of Nurse Practitioner Programs, A Report of the National Task Force on Quality Nurse Practitioner Education (available from the National Organization of Nurse Practitioner Faculties (NONPF) at *http://www.nonpf.com*). Nurse practitioner graduates, at a minimum, must meet the national core competencies established in the most current editions or updated sections (such as ''Domains and Competencies of Nurse Practitioner Practice—2002'') of Advanced Nursing Practice: Curriculum Guidelines and Program Standards for Nurse Practitioner Education; and Criteria for Evaluation of Nurse Practitioner Programs; and any applicable national specialty competencies such as those established in the most current Nurse Practitioner Primary Care Competencies in Specialty Areas: Adult, Family, Gerontological, Pediatric, and Women's Health or most current relevant sections of these documents. This document is available online at *http://www.nonpf.com* and *http://www.aacn.nche.edu*.

Nurse-Midwifery education programs must provide evidence of pre-accreditation or accreditation from the Division of Accreditation (DOA) of the American College of Nurse-Midwives (ACNM), recognized for this purpose by the U.S. Department of Education, prior to Notice of Grant Award. All programs must comply with the following criteria, as applicable:

(a) The current Criteria for Pre-accreditation of Education Programs in Nurse-Midwifery and Midwifery with Guidelines for Elaboration and Documentation of Pre-accreditation Criteria; or

(b) The current Criteria for Accreditation of Education Programs in Nurse-Midwifery and Midwifery with Guidelines for Elaboration and Documentation of Accreditation Criteria.

At a minimum, graduates of these programs must be prepared to meet national competencies established in The Core Competencies for Basic Midwifery Practice. The above three documents are available from the Division of Accreditation of the ACNM at *http://www.acnm.org*.

Organization and Administration

A nurse practitioner or nurse-midwifery education program should

actively collaborate with nurses and other health professionals who have expertise relevant to nurse practitioner or nurse-midwifery practice and primary health care, to assist in the initial and ongoing planning, implementation, and evaluation of the program.

Student Enrollment

All students enrolled in a nurse practitioner or nurse-midwifery education program should be licensed to practice nursing—

(a) At the time of enrollment, or

(b) In the case of a program leading to a graduate degree in nursing, at or prior to the time of completion of a program.

The policies for the recruitment, selection and progression of students should be consistent with the requirements of the sponsoring institution and developed in cooperation with the faculty responsible for conducting the nurse practitioner and/or nurse-midwifery program. Programs should develop, implement, and evaluate specific plans to achieve recruitment, retention, timely progression and graduation of a diverse student body.

Length of Program

A nurse practitioner or nurse-midwifery education program is a formal program of study of a minimum of 1 academic year (9 months) in length and should include at least 4 months in the aggregate of full-time didactic instruction. Post-master's programs must also meet this requirement. Individual students may be able to complete the program within a shorter time frame.

Curriculum

A nurse practitioner or nurse-midwifery education program should be a distinct program of study consisting of didactic instruction and supervised clinical practice designed to teach registered nurses the knowledge and competencies needed to perform the functions and scope of practice of a nurse practitioner or nurse-midwife. The faculty has the ultimate responsibility for evaluation of student clinical performance and achievement of competence. The nurse practitioner and nurse-midwifery specialty portion of the graduate curriculum should be developed and implemented cooperatively by nurse practitioner and/or nurse-midwife educators, other graduate nursing faculty, and appropriate representatives of other health disciplines. Interdisciplinary academic and practice learning experiences are recommended to prepare graduates to serve underserved populations in complex health systems. The program content, both didactic and clinical portions, should prepare the nurse practitioner or nurse-midwife to provide primary health care within a community perspective. The nurse practitioner and nurse-midwife should be knowledgeable about the cultural factors that affect the health status of the populations served and how to assist the community make decisions about its priorities and health services. The curriculum must include student preceptorships and/or other clinical learning experiences. Faculty should develop and assess clinical learning sites through site visits and prepare clinical faculty and preceptors for teaching, evaluating, and problem solving with nurse practitioner and nurse-midwifery students. Nurse practitioner or nurse-midwifery program faculty should retain full responsibility for assuring the quality and effectiveness of each practicum site for student learning. Specific criteria used for the selection of clinical learning sites should be documented in the application.

Faculty Qualifications

A nurse practitioner or nurse-midwifery education program should have a sufficient number of qualified nurse practitioner or nurse-midwifery, nursing, medical and other related health professional faculty with academic preparation and clinical expertise relevant to their areas of teaching responsibility and with demonstrated ability in the development and implementation of educational programs. The program director should be a nationally certified nurse practitioner or nurse-midwife with appropriate academic preparation, clinical expertise and experience as an educator. The lead faculty for a specialty track must be certified in the specialty. Nurse practitioner and nurse-midwife clinical faculty and preceptors must have national and/or State certification as appropriate for their specialty and must have at least one year of practice experience as a nurse practitioner or certified nurse-midwife. Other clinicians serving as clinical preceptors must be authorized by the State licensing entity to practice in their specific scope of practice. Faculty qualifications should be consistent with the requirements of their academic institution. The faculty must participate in maintenance of competency and clinical practice.

Resources

A nurse practitioner or nurse-midwifery education program must have available sufficient educational and clinical resources in a variety of practice settings with adequate space and equipment, number, age and type of clients needed for the students enrolled in the program. Where the institution or organization conducting the program does not provide the clinical practice settings itself, it should provide for such settings through written agreements with other appropriate institutions or organizations.

Definitions

The following terms are defined for purposes of the Nurse Practitioner and Nurse-Midwifery Program.

Culturally and Linguistically Appropriate Services means health care services that are respectful of and responsive to cultural and linguistic needs.

Full-time Student means a student enrolled in at least the number of credits defined as full-time by the institution.

Full-time educational program means an educational program that provides for a full-time program of study as defined by the institution. Students progressing through the program are able to enroll on a full-time basis to complete the program in a timely manner. Students in such a program may be part-time or full-time.

Nurse-Midwife means a registered nurse educated in the two disciplines of nursing and midwifery who has successfully completed a nurse-midwifery education program accredited by the Division of Accreditation of the American College of Nurse-Midwives (ACNM). Following ACNM Certification Council (ACC) certification, the nurse-midwife has ability to provide independent management of primary health care for women in the context of family-centered care focusing particularly on pregnancy, childbirth, the postpartum period, care of the newborn, and the family planning and gynecological needs of women within a health care system that provides for consultation, collaborative management or referral as indicated by the health status of the client. This ability includes the:

- Assessment of the health status of women and infants, through health and medical history taking, physical examination, ordering, performing, supervising and interpreting diagnostic tests and making diagnoses;
- Institution and provision of continuity of primary health care to women and referral to other health care providers as appropriate;

• Prescription of pharmacological and non-pharmacological therapeutics, consistent with current standards of care;

• Provision of instruction and counseling to individuals, families, and groups in the areas of promotion and maintenance of health and disease prevention by actively involving these individuals in the decision making and planning for their own health care; and

• Collaboration with other health care providers and agencies to provide and coordinate services to individual women, children, and families.

Nurse Practitioner means a registered nurse who has successfully completed a Nurse Practitioner Program, as defined below, who can deliver primary and acute care services in a variety of settings, such as homes, ambulatory care facilities, long-term care facilities, and acute care facilities, using independent and interdependent decision making with direct accountability for clinical judgment. The health care services to be provided include:

• Assessment of the health status of individuals and families through health and medical history taking, physical examination, ordering, performing, supervising, and interpreting diagnostic tests and making diagnoses;

• Management of acute episodic and chronic illnesses;

• Institution and provision of continuity of primary health care to individuals and families and referral to other health care providers when appropriate;

• Prescription of treatments including pharmacological and non-pharmacological therapeutics, consistent with current standards of care;

• Provision of instruction and counseling to individuals, families, and groups in the areas of promotion and maintenance of health and disease prevention, by actively involving these individuals in the decision making and planning for their own health care; and

• Collaboration with other health care providers and agencies to provide, and where appropriate, coordinate services to individuals and families.

Nurse Practitioner or Nurse-Midwifery Program means a full-time educational program of study, as defined by the institution, (although students may be progressing through the program on a full-time or part-time basis), which meets the Guidelines prescribed herein. The program's objective is the education of nurses who will, upon completion of their studies in the program, be qualified to effectively provide primary care in a variety of settings, including in homes, ambulatory care facilities, long-term care facilities, acute care, and other health care settings.

Post-Nursing Master's Certificate Program means a formal, post-graduate program for Registered Nurses with master's degrees that awards a certificate and academic credit that is documented on a graduate transcript from the school for completion of the program of study as a Nurse Practitioner or Nurse-Midwife.

Preceptorship means a clinical learning experience in which the student is assigned to a faculty member or with oversight by program faculty to a designated preceptor who is a nurse practitioner or nurse-midwife or other health professional for specific aspects of the clinical learning experience. The preceptorship provides the student with practice experiences conducive to meeting the defined goals and objectives of the particular clinical course. The preceptor is responsible for the daily teaching and assignment of individuals to be cared for, supervision, and participation in the evaluation of the nurse practitioner or nurse-midwifery student. The preceptor teaches, supervises, and evaluates the student and provides the student with an environment that permits observation, active participation, and management of primary health care. Before and during this preceptorship, the program faculty visit and assess the clinical learning sites and prepare the clinical faculty/preceptors for teaching their students.

Primary Care means the provision of integrated, accessible health care services by clinicians, including nurse practitioners and nurse-midwives, who are accountable for addressing a large majority of personal health care needs within their scopes of practice, developing a sustained partnership with clients, and practicing in the context of family and communities. Critical elements also include accountability of clinicians and systems for quality of care, consumer satisfaction, efficient use of resources, and ethical behavior. Clients have direct access to an appropriate source of care, which continues over time for a variety of problems and includes needs for preventive services. The Guidelines use ''Primary Care'' and ''Primary Health Care'' interchangeably. (Definition adapted from Barbara Starfield, *Primary Care Concept, Evaluation, and Policy*, Oxford University Press, New York, 1992 p. 4 and Institute of Medicine: Moila S. Donaldson, Karl D. Yordy, Kathleen N., and Neal A. Vanselow, Editors, Committee on the Future of Primary Care, Division of Health Care Services, *Primary Care: America's Health in a New Era, Summary*, National Academy Press, Washington, DC, 1996, p. 23.)

Dated: February 15, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. 05–3425 Filed 2–22–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuation of an information collection requirement. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the information collection outlined in 44 CFR part 71, as it pertains to application for National Flood Insurance Program (NFIP) insurance for buildings located in Coastal Barrier Resource System (CBRS) communities.

SUPPLEMENTARY INFORMATION: The Coastal Barrier Resources Act (CBRA Pub. L. 97–3480) and the Coastal Barrier Improvement Act (CBRA Pub. L. 101–591) are federal laws that were enacted on October 1, 1982, and November 16, 1990, respectively. The legislation was implemented as part of a Department of the Interior (DOI) initiative to preserve the ecological integrity of areas DOI designates as coastal barriers and otherwise protected areas. The laws provide this protection by prohibiting all federal expenditures or financial assistance including flood insurance for residential or commercial development in areas identified with the system. When an application for flood insurance is submitted for buildings located in CBRS communities, documentation must be submitted as evidence of eligibility.

FEMA Regulation 44 CFR part 71 implements the CFRA. The information

collection requirement is set forth in the FEMA regulation, and the information provided by the affected public is used by FEMA to determine that a building, which is located on a designated coastal barrier and for which an application for flood insurance is being made, is neither new construction nor a substantial improvement, and is, therefore, eligible for NFIP coverage. If the information is not collected, NFIP policies would be provided for buildings, which are legally ineligible for it, thus exposing the Federal Government to an insurance liability Congress chose to limit.

Collection of Information

Title: Implementation of Coastal Barrier Resources Act.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0010.

Abstract: When an application for flood insurance is submitted for buildings located in CBRS communities, one of the following types of documentation must be submitted as evidence of eligibility:

—Certification from a community official stating the building is not located in a designated CBRS area.

—A legally valid building permit or certification from a community official stating that the building's start of construction date preceded the date that the community was identified in the system.

—Certification from the governmental body overseeing the area indicating that the building is used in a manner consistent with the purpose for which the area is protected.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, Local or Tribal Government.

Number of Respondents: 60.

Frequency of Response: One time.

Hours per Response: 1.5.

Estimated Total Cost to Respondents: $600 (60 respondents × $10 per respondent). The cost to the respondent, *i.e.*, applicant for flood insurance, is the cost, if any, to obtain the required documentation from local officials. Fees charged, if any, to the applicants, are nominal, *i.e.*, the cost of photocopying the public record. Information of this type is frequently provided upon request free of charge by the community as a public service. The average cost to the respondent is estimated to be $10, the cost to make phone calls, mail a written request, or make a trip to a local office to obtain the document, and includes any copying fees, which may be charged by the local office.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Section Chief, Records Management, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Lynn Sawyer, Program Analyst, Risk Insurance Branch, Mitigation Division at 301–918–1452 for additional information. You may contact Ms. Anderson for copies of the proposed information collection requirement at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: February 16, 2005.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–3406 Filed 2–22–05; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1573–DR]

Indiana; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–1573–DR), dated January 21, 2005, and related determinations.

DATES: *Effective Date:* February 11, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 11, 2005.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–3408 Filed 2–22–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1573–DR]

Indiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1573–DR), dated January 21, 2005, and related determinations.

DATES: *Effective Date:* February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to

include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 21, 2005:

Perry County for Public Assistance.

Bartholomew, Knox, Owen, Putnam, Sullivan, Union, Vermillion, Vigo, and Wells Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–3409 Filed 2–22–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1574–DR]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1574–DR), dated February 1, 2005, and related determinations.

DATES: *Effective Dates:* January 25, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 25, 2005.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–3407 Filed 2–22–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Devils River Minnow Draft Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the Devils River Minnow Draft Recovery Plan. The Devils River minnow (*Dionda diaboli*) is known to occur in streams in Kinney and Val Verde Counties, Texas, and Coahila, Mexico. The Service solicits review and comment from the public on this Draft Recovery Plan.

DATES: The comment period for this Draft Recovery Plan closes April 11, 2005. Comments on the Draft Recovery Plan must be received by the closing date to assure consideration.

ADDRESSES: Persons wishing to review the Draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758. The Draft Recovery Plan may also be obtained from the Internet at *http://southwest.fws.gov/htopic.html/* and *http://ifw2es.fws.gov/AustinTexas/*. Comments and materials concerning this Draft Recovery Plan may be mailed to ''Field Supervisor'' at the address above.

FOR FURTHER INFORMATION CONTACT: Robert Pine, Austin Ecological Services Field Office, at the above address; telephone (512) 490–0057, facsimile (512) 490–0974.

SUPPLEMENTARY INFORMATION:

Background

The Devils River minnow (*Dionda diaboli*) was listed as threatened on October 20, 1999, under authority of the Endangered Species Act of 1973, as amended (64 FR 56596). The threats facing the survival and recovery of this species include habitat loss due to declining surface water flows from springs, pollution to streams, and impacts from nonnative species. The Draft Recovery Plan includes information about the species and provides objectives and actions needed to delist the species.

The delisting criteria proposed in the Draft Plan state that the Devils River minnow should be considered for delisting when:

(1) Population monitoring results verify stable or increasing Devils River minnow population trends for at least 10 years, throughout its range, including Devils River (middle portion), San Felipe Creek, Sycamore Creek, and Pinto Creek in Texas. Stable populations should also be confirmed in the Rio Salado drainage in Mexico and in Las Moras Creek, if reestablishment is scientifically feasible; (2) Flows in streams supporting Devils River minnow have been assured, including Las Moras Creek (if reestablishment is feasible), through State or local groundwater management plans, water conservation plans, drought contingency plans, regulations, or equivalent binding documents; (3) Protection, where necessary, of surface water quality is ensured by demonstrated compliance with water quality standards and implementation of water quality controls, particularly in urban areas such as the cities of Del Rio and Brackettville; and, (4) Management and control of nonnative species by local, regional, State, and Federal authorities are demonstrated to be successful.

A summary of high-priority recovery tasks includes actions to: (1) Maintain and enhance Devils River minnow populations and habitats by monitoring rangewide status, determining biological and ecological requirements, identifying specific habitat requirements, and managing existing Devils River minnow habitat; (2) Establish additional Devils River minnow populations within the historic range, specifically in Las Moras Creek, by developing and implementing a reintroduction plan, developing landowner cooperative agreements, and restoring habitat conditions at former sites of occurrence; and (3) Maintain genetic reserves of Devils River minnow through captive propagation by developing and implementing a genetics management plan and maintaining at least two captive populations until no longer needed.

Restoring an endangered or threatened animal or plant to the point

where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service considers all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and others also take these comments into account in the course of implementing recovery plans.

The Devils River Minnow Draft Recovery Plan is being submitted for review to all interested parties, including independent peer review. After consideration of comments received during the review period, the recovery plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comment received by the date specified above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 19, 2005.

Geoffrey L. Haskett,

Acting Regional Director: Region 2.

[FR Doc. 05–3411 Filed 2–22–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK964–1410–HY–P; AA–6669–A2, BBA–3]

Notice of Decision Approving Lands for Conveyance: Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Igiugig, Native Corporation. The lands are located in Tps. 11 and 12 S., R. 37 W., Seward Meridian, Alaska, in the vicinity of Igiugig, Alaska, and contain 503.00 acres. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 25, 2005, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: John Leaf, by phone at 907–271–3283, or by e-mail at *John_Leaf@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Leaf.

John Leaf,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. 05–3404 Filed 2–22–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK050–1430–EQ–P; AA085605]

Lease of Public Land: Paxson, AK

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for a 20 year renewable commercial lease to the State of Alaska, Department of Fish and Game, Commercial Fisheries. The lease is intended to authorize the maintenance and operation of a fish hatchery on public lands.

DATES: The time limits for filing an appeal are:

1. Comments and an application must be received within 45 days from the publication of this notice to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Glennallen Field Office, P.O. Box 147, Glennallen, Alaska 99588–0147.

FOR FURTHER INFORMATION CONTACT: Brenda Becker, by phone at 907–822–3217, or by e-mail at *Brenda_becker@ak.blm.gov*.

SUPPLEMENTARY INFORMATION: The site examined and found suitable for leasing under the provisions of Sec. 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR 2920, is described as within:

Secs. 7 and 8, T. 22 S., R. 12 E., Copper River Meridian.

An application will only be accepted from the State of Alaska, Department of Fish and Game, Commercial Fisheries. The comments and application must include a reference to this notice. Fair market rental as determined by appraisal will be collected for the use of these lands, and reasonable administrative and monitoring costs for processing the lease. A final determination will be made after completion of an environmental assessment.

Ramone Baccus McCoy,

Glennallen Field Manager.

[FR Doc. 05–3405 Filed 2–22–05; 8:45 am]

BILLING CODE 4310–JA–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 29, 2005. Pursuant to section 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 Street, NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye Street, NW., 8th floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by March 10, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

IOWA

Polk County

Seth Richards Commercial Block, 300–310 Court Ave., Des Moines, 05000136

MARYLAND

Baltimore County

Hampton, 535 Hampton Ln., Towson, 05000118

MASSACHUSETTS

Franklin County

Tavern Farm, Old, 817 Colrain Rd., Greenfield, 05000120

MISSOURI

Boone County

Kress Building (Columbia MRA), 1025 E. Broadway, Columbia, 05000122

Lawrence County

Lawrence County Bank Building, 100 W. Commercial St., Pierce City, 05000119

St. Louis Independence City

Franklin School (St. Louis Public Schools of William B. Ittner MPS (AD)), 814 N. 19th St., St. Louis (Independence City), 05000121

NEW JERSEY

Atlantic County

Great Egg Coast Guard Station, 2301 Atlantic Ave., Longport, 05000128

Camden County

Tomlinson, Isaac, House, 834 Blackwood-Clementon Rd., Pine Hill, 05000123

Cape May County

Reeves-Iszard-Godfey House, 3097 Shore Rd., Upper Township, 05000127

Mercer County

Witherspoon Street School for Colored Children, 35 Quarry St., Princeton, 05000125

Morris County

Decker-Kincaid Homestead, 591 Powerville Rd., Boonton, 05000126

Ocean County

Cox, Mary Etta, House, 353 N. Main St., Barnegat, 05000124

OKLAHOMA

Grady County

Chickasha Downtown Historic District, Roughly bounded by First/Third St., Kansas Ave., Seventh St., and the Alley N of Chickasa Ave., Chickasha, 05000132

Grady County Courthouse (County Courthouses of Oklahoma TR), 326 W. Choctaw Ave., Chickasha, 05000131

Kiowa County

Downtown Hobart Historic District, Roughly bounded by Jefferson St., 3rd, Washington, 4th and 200 and 500 blk of S Main St., Hobart, 05000130

VIRGINIA

Albemarle County

Ramsay, 7760 Rockfish Gap Turnpike, Greenwood, 05000135

Chesterfield County

Hallsboro Store, 920 Hallsboro Rd., Midlothian, 05000133

Point of Rocks, 1005 Point of Rocks Rd., Chester, 05000134

A request for REMOVAL has been made for the following resource:

OKLAHOMA

Oklahoma County

Montgomery Ward Building, 500 W. Main St., Oklahoma City, 80003287

[FR Doc. 05–3386 Filed 2–22–05; 8:45 am]

BILLING CODE 4312–05–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 February 5, 2005. Pursuant to section 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 Street NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye Street, NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by March 10, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Gila County

Miami Community Church, 305 Live Oak, Miami, 05000137

CALIFORNIA

Los Angeles County

Bembridge House, 953 Park Circle Dr., Long Beach, 05000002

San Francisco County

Baker and Hamilton, 601 Townsend St., San Francisco, 05000001

COLORADO

Montezuma County

Sand Canyon Archaeological District (Great Pueblo Period of the McElmo Drainage Unit MPS), Address Restricted, Cortez, 05000138

FLORIDA

Duval County

Knight, W.A., Building (Downtown Jacksonville MPS), 113 W. Adams St., Jacksonville, 05000139

GEORGIA

DeKalb County

Candler Park Historic District (Boundary Increase), Roughly bounded by Moreland Ave., Freedom Pkwy., Harold Ave., Matthews St., and DeKalb Ave., Atlanta, 05000140

Muscogee County

Loeb, Sol-Garrett-Joy Building, 900 Front Ave. and 901 Broadway, Muscogee, 05000141

KANSAS

Barton County

Crest Theater (Theaters and Opera Houses of Kansas MPS), 1905 Lakin Ave., Great Bend, 05000003

Coffey County

Plaza Theater (Theaters and Opera Houses of Kansas MPS), 404 Neosho St., Burlington, 05000005

Edwards County

Palace Theater (Theaters and Opera Houses of Kansas MPS), 222 E. 6th St., Kinsley, 05000006

Hamilton County

Northup Theater (Theaters and Opera Houses of Kansas MPS), 116 N. Main St., Syracuse, 05000008

Johnson County

Overland Theater (Theaters and Opera Houses of Kansas MPS), 7204 W. 80th St., Overland Park, 05000009

Montgomery County

Midland Theater (Theaters and Opera Houses of Kansas MPS), 212–214 W. 8th St., Coffeyville, 05000007

Wyandotte County

Granada Theater (Theaters and Opera Houses of Kansas MPS), 1013–1019 Minnesota Ave., Kansas City, 05000004

KENTUCKY

Jefferson County

Brass Finishing Building, Standard Sanitary Manufacturing Company, 1547 S. 7th St., Louisville, 05000142

St. Columba Catholic Campus, 3514 W. Market, Louisville, 05000143

Powell County

Raised Spirits Rockshelter, Address Restricted, Slade, 05000144

Woodford County

Bullock Site, Address Restricted, Verzailes, 05000145

MARYLAND

Prince George's County

Abraham Hall (African-American Historic Resources of Prince George's County, Maryland), 7612 Old Muirkirk Rd., Beltsville, 05000146

Butler House (African-American Historic Resources of Prince George's County, Maryland), 6403 Oxon Hill Rd., Oxon Hill, 05000147

Calloway, Thomas J., House (African-American Historic Resources of Prince George's County, Maryland), 9949 Elm St., Lanham, 05000148

Ridgley Methodist Episcopal Church (African-American Historic Resources of Prince George's County, Maryland), 8900 Central Ave., Landover, 05000149

St. Mary's Beneficial Society Hall (African-American Historic Resources of Prince George's County, Maryland), 14825 Pratt St., Upper Marlboro, 05000150

MICHIGAN

Chippewa County

DeTour Reef Light Station (Light Stations of the United States MPS), 3.0 mi. S of SR 134 ferry dock, DeTour Township, 05000151

Ingham County

Somerville Barn, 1050 N. College Rd., Alaiedon Township, 05000152

Ionia County

Portland Downtown Historic District, Kent, Bridge, Maple Sts., Grand River Ave., Portland, 05000153

NEBRASKA

Boone County

Petersburg Jail, Main St. and Second St., Petersburg, 05000154

Burt County

Tekamah Carnegie Library, 204 S. 13th St., Tekamah, 05000155

Fillmore County

Dempster—Sloan House, 1212 M St., Geneva, 05000156

Richardson County

Humboldt Commercial Historic District, Bounded by Long Branch St., Fifth St., Nemaha St., and Second St., Humboldt, 05000157

NEW HAMPSHIRE

Grafton County

Sphinx Tomb, Address Restricted, Hanover, 05000173

Merrimack County

Suncock Village CommercialCivic Historic Distrct, 1, 9–15 Glass St., 116–161 Main St., 19 Mill Falls, 4 Union St., Pembroke, 05000174

Tucker Mountain Schoolhouse, Address Restricted, Andover, 05000175

NEW JERSEY

Mercer County

Stevens, Israel, House, 2167 Brunswick Ave., Lawrence, 05000176

Ocean County

Manitou Park School House, 167 Third Ave., Berkeley, 05000177

NEW YORK

Cayuga County

New Hope Mills Complex, Glen Haven Rd. and NY 41A, New Hope, 05000158

Richardson, William, House, 5494 Cross Rd., Union Springs, 05000160

Swift, Philetus, House, 866 NY 96, Phelps, 05000159

Wheeler, George and Addison, House, 6353 Grimble Rd., East Bloomfield, 05000168

Erie County

School 13, 266–268 Oak St., Buffalo, 05000161

Franklin County

First Union Protestant Church of Mountain View, 7 Church Rd., Bellmont, 05000162

St. Regis Mountain Fire Observation Station (Fire Observation Stations of New York State Forest Preserve MPS) St. Regis Mountain, Santa Clara, 05000163

Herkimer County

Breckwoldt-Ward House, 90 Van Buren St., Dolgeville, 05000164

Livingston County

First Methodist Episcopal Church of Avon, 130 Genesee St., Avon, 05000165

Montgomery County

Green Hill Cemetery, Church and Cornell Sts., Amsterdam, 05000166

New York County

Building at 304 Park Avenue South, 304 Park Ave. S, New York, 05000167

Steuben County

Wood Road Metal Truss Bridge, Wood Rd. over Cohocton River, Campbell, 05000169

Suffolk County

Rogers, Nathaniel, House, 2539 Montauk Hwy., Bridgehampton, 05000170

Sullivan County

C. Burton Hotel, 450 Main St., Grahamsville, 05000171

Cochecton Railroad Station (Upper Delaware Valley, New York and Pennsylvania MPS), NY 97, Cochecton, 05000172

OHIO

Mahoning County

Mill Creek Park Historic District, Mahoning Ave. to Boardman-Canfield Rd., Mill Creek, 960 Bears Den Rd., Youngstown, 05000178

SOUTH DAKOTA

Kingsbury County

Berger Farmstead, 19802 446th Ave., Badger, 05000179

TENNESSEE

Davidson County

Cameron School, 1034 First Ave. S, Nashville, 05000180

Nashville Christian Institute Gymnasium, 2420 Batavia St., Nashville, 05000181

Shelby County

First Baptist Church (Religious Resources of Memphis, Shelby County, TN MPS), 538 Linden Ave., Memphis, 05000182

First Presbyterian Church (Religious Resources of Memphis, Shelby County, TN MPS), 166 Poplar Ave., Memphis, 05000183

Grace Episcopal Church (Religious Resources of Memphis, Shelby County, TN MPS), 555 Vance Ave., Memphis, 05000184

St. Thomas Catholic Church and Convent (Religious Resources of Memphis, Shelby County, TN MPS), 588 E. Trigg Ave., Memphis, 05000185

Williamson County

Smith, Alexander, House (Williamson County MRA (AD)), 1304 Wilson Pike, Brentwood, 05000186

UTAH

Summit County

Maycock, John, Cabin, Approx. 20 mi. NE of Kamas and 0.5 mi. W of UT 150, Kamas, 05000187

VERMONT

Caledonia County

Shedd, Josiah and Lydia, Farmstead (Agricultural Resources of Vermont MPS), 1721 Bayley-Hazen Rd., Peacham, 05000188

St. Johnsbury Federal Fish Culture Station (Fish Culture Resources of Vermont MPS), 374 Emerxon Falls Rd., St. Johnsbury, 05000189

WASHINGTON

Spokane County

Opportunity Township Hall, 12114 E. Sprague Ave., Spokane Valley, 05000190
Peyton Building and Peyton Annex, 722 W. Sprague Ave./10 N. Post St., Spokane, 05000191

A request for REMOVAL has been made for the following resource:

NEW MEXICO

McKinley

Log Cabin Motel (Route 66 through New Mexico MPS), 1010 W. 66 Ave.

[FR Doc. 05–3387 Filed 2–22–05; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–506]

Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as To Claim 12 of U.S. Patent No. 6,466,736

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') terminating the investigation as to one patent claim.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 14, 2004, based on a complaint filed on behalf of Zoran Corporation and Oak Technology, Inc. both of Sunnyvale, CA (collectively ''complainants''). 69 FR 19876. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain optical disk controller chips and chipsets and products containing same, including DVD players and PC optical storage devices, by reason of infringement of claims 1–12 of U.S. Patent No. 6,466,736 (the ''736 patent), claims 1–3 of U.S. Patent No. 6,584,527, and claims 1–35 of U.S. Patent No. 6,546,440 (the ''440 patent). The notice of investigation identified 12 respondents. On June 7, 2004, the ALJ issued an ID (Order No. 5) terminating the investigation as to two respondents on the basis of a consent order and settlement agreement. On June 22, 2004, the ALJ issued an ID (Order No. 7) granting complainants' motion to amend the complaint and notice of investigation to add nine additional respondents. On December 22, 2004, the ALJ issued an ID (Order No. 33) granting complainants' motion to terminate the investigation in part with respect to claims 2–6, 8–10, and 11 of the ''736 patent and claims 2–4, 6, 9, 11, 12, 15–18, 20, 22–34, and 35 of the ''440 patent. Those IDs were not reviewed by the Commission.

On January 21, 2005, complainants moved pursuant to Commission rule 210.21(a) to terminate the investigation in part by withdrawing the infringement allegations as to claim 12 of the ''736 patent. No responses to the motion were filed.

On January 28, 2005, the ALJ issued an ID (Order No. 37) granting the motion.

No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: February 16, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–3417 Filed 2–22–05; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1069 (Final)]

Outboard Engines From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan of outboard engines and powerheads, provided for in subheading 8407.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective January 8, 2004, following receipt of a petition filed with the Commission and Commerce by Mercury Marine, a division of Brunswick Corp., Fond du Lac, WI. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of outboard engines from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 23, 2004 (69 FR 51859).[3] The hearing was held in Washington, DC, on December 14, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 17, 2004. The views of the Commission are contained in USITC Publication

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Stephen Koplan and Commissioner Charlotte R. Lane dissenting.

[3] The Commission revised its schedule and the notice was published in the **Federal Register** of January 10, 2005 (70 FR 1739).

3752 (February 2005), entitled Outboard Engines from Japan: Investigation No. 731–TA–1069 (Final).

Issued: February 17, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–3415 Filed 2–22–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Health-System Pharmacists

Notice is hereby given that, on September 9, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Health-System Pharmacists (''ASHP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Society of Health-System Pharmacists, Bethesda, MD. The nature and scope of ASHP's standards development activities are: The publication of guidance documents of varying scope that provide ongoing advice to pharmacy practitioners and health-systems to improve the medication use process, patient care and safety, and patient outcomes and quality of life.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–3437 Filed 2–22–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—United States Adopted Names Council

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), United States Adopted Names Council (''USAN'') on behalf of itself and its sponsors has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: United States Adopted Names Council, Chicago, IL. The nature and scope of USAN's standards development activities are: The development of standards for simple and unique nonproprietary names for drugs by establishing logical nomenclature classifications based on pharmacological and/or chemical relationships. The USAN is sponsored by the American Medical Association, the American Pharmacists Association, and United States Pharmacopeia. USAN works closely with the World Health Organization International Nonproprietary Name Committee (INN) and various national nomenclature groups to develop global standardization and unification of drug nomenclature and related rules to ensure that drug information is communicated accurately and unambiguously.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–3438 Filed 2–22–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on January 19, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agere Systems, Inc., Allentown, PA; ARC International PLC, Nashua, NH; CNRS-Centre National De Recherche Scientifique, Paris, France; ControlNet, Inc., Campbell, CA; Design and Reuse, Grenoble, France; eSilicon Corp., Sunnyvale, CA; Fraunhofer IPMS, Dresden, Germany; HCL Technologies Indian Pvt., Ltd., Chennai, India; ITRI-Industrial Technology Research Institute, Hsinchu, Taiwan; Jet Propulsion Laboratory, Pasadena, CA; Macronix International Company, Ltd., Hsinchu, Taiwan; M–Techno Structure IT-Solution GMBH, Vienna, Austria; Morpho Technologies, Irvine, CA; NewLogic Technologies AG, Lustenau, Austria; Renesas Technology Corporation, Tokyo, Japan; Sanyo LSI Technology, India Pvt. Ltd., Bangalore, India; SilTerra Malaysia Sdu. Bhd., Sunnyvale, CA; Synchronicity, Inc., Marlboro, MA; TaraCom Integrated Products, Sunnyvale, CA; Tower Semiconductor, Ltd., Migdal Haemek, Israel; VCX, Limited, Livingston, Scotland, United Kingdom; WIS Technologies, San Jose, CA; and Xignal Technologies, AG Unterhaching, Germany have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on October 8, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 3, 2004 (69 FR 70284).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–3436 Filed 2–22–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,181]

Aladdin Industries, LLC, Corporate Headquarters, Nashville, TN; Notice of Negative Determination Regarding Application for Reconsideration

By application of January 19, 2005, the company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternate Trade Adjustment Assistance (ATAA). The negative determination was signed on January 4, 2005, and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration asserts that the workers subject of this petition worked alongside, and should be treated the same as, workers of Aladdin Industries, LLC, Nashville, Tennessee, who were previously certified eligible to apply for the TAA under petition number TA–W–41,514.

The certification for TA–W–41,514 was issued on July 18, 2002, and provided coverage to workers engaged in employment related to the production of hot and cold insulated products, including thermos bottles and beverages mugs, who became totally or partially separated from employment on or after April 19, 2001, through July 18, 2004. The certification was based on the findings that sales, production, and employment declined during the period under investigation (2000, 2001 and January through March 2002). During that same time period company imports of thermos bottles and beverage mugs increased.

The petition for TA–W–56,181, initiated on December 8, 2004, was filed by a company official on behalf of workers of the Corporate Headquarters of Aladdin Industries, Nashville, Tennessee. The company had sold the firm and production ceased on August 2, 2002. For more than one year prior to the date of the petition, the subject company did not produce any article at its Nashville, Tennessee facility. The investigation found that the corporate headquarters worker group was engaged in closing out the remaining business. Specifically, the activities at corporate headquarters consisted of accounting, employee benefits (insurance and pension), and clearing out and selling machinery.

The petition was denied because the firm did not produce an article within the meaning of Section 222(a)(2) of the Trade Act. Furthermore, the workers did not support production at an affiliated facility whose workers independently met the statutory criteria for TAA certification since Aladdin Industries, LLC ceased production in August 2002, more than one year prior to the petition date (December 1, 2004). Therefore, the Department determined that the corporate headquarters worker group cannot be certified as eligible to apply for adjustment assistance.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for trade adjustment assistance TAA. Since the workers are denied eligibility to apply for TAA, the worker group cannot be certified eligible for ATAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 3rd day of February, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–700 Filed 2–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,343]

Dorby Group aka Dorby Frocks Ltd. New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 14, 2004, in response to a petition filed on behalf of workers at Dorby Group, AKA Dorby Frocks LTD., New York, New York.

The Department of Labor issued a negative determination applicable to the petitioning group of workers on January 21, 2005 (TA–W–56,240). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 1st day of February, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–711 Filed 2–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications for Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may

request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 7, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 7, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC, this 16th day of February, 2005.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED BETWEEN 01/03/2005 AND 02/01/2005

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
56,268	Gemini Textile Screenprint Inc. (Wkrs)	Battleboro, NC	01/03/2005	01/03/2005
56,269	STS Weaving LLC (Comp)	St. Albans, VT	01/03/2005	12/29/2004
56,270	ExxonMobil Chemical Co (Wkrs)	Macedon, NY	01/03/2005	12/20/2004
56,271	Houze Glass Corporation (USWA)	Point Marion, PA	01/03/2005	12/22/2004
56,272	Geotrac, Inc. (NPW)	Norwalk, OH	01/03/2005	12/13/2004
56,273	National Spinning Operation, LLC (Comp)	Washington, NC	01/03/2005	12/20/2004
56,274	Shane Hunter (Wkrs)	San Francisco, CA	01/03/2005	12/15/2004
56,275	House of Brussels Chocolates (Wkrs)	San Francisco, CA	01/03/2005	12/14/2004
56,276	Trinity Marine Products (State)	Madisonville, LA	01/03/2005	12/22/2004
56,277	Glenshaw Glass Corporation (USWA)	Glenshaw, PA	01/03/2005	12/22/2004
56,278	Lexington Die Casting (Comp)	Lakewood, NY	01/03/2005	12/21/2004
56,279	Raytek Corp. (State)	Santa Cruz, CA	01/03/2005	12/14/2004
56,280	Hutchinson Seal (State)	Downey, CA	01/03/2005	12/09/2004
56,281	BASF Corporation (Comp)	Morganton, NC	01/03/2005	12/13/2004
56,282	Nova Trading (Comp)	Monroe, NC	01/04/2005	12/14/2004
56,283	Service Manufacturing (Wkrs)	Weslaco, TX	01/04/2005	12/13/2004
56,284	Hickory Manor House (Wkrs)	Sparta, NC	01/04/2005	12/14/2004
56,285	Arcina, LLC (Wkrs)	State College, PA	01/04/2005	01/03/2005
56,286	Duracell (Wkrs)	Lexington, NC	01/04/2005	12/30/2004
56,287	Donnkenny Apparel, Inc. (NPW)	Wytheville, VA	01/04/2005	12/16/2004
56,288	RBX Industries (State)	Colt, AR	01/05/2005	01/04/2005
56,289	Box USA Group (State)	Baltimore, MD	01/05/2005	01/05/2005
56,290	Northeast Wood Turning, Inc. (Comp)	West Farmington, ME	01/05/2005	12/30/2004
56,291	Stimson Lumber Company (State)	Forest Grove, OR	01/06/2005	01/04/2005
56,292	Maui Pineapple Co., Ltd. (ILWU)	Kahului, HI	01/06/2005	12/15/2004
56,293	Dana Corporation (Comp)	Statesville, NC	01/06/2005	12/27/2004
56,294	Marash Advantage America (NPW)	Spartanburg, SC	01/06/2005	12/31/2004
56,295	Springs Industries (Comp)	Sardis, MS	01/06/2005	01/05/2005
56,296	Charles Craft (Comp)	Laurinburg, NC	01/06/2005	01/05/2005
56,297	Dicey Mills, Inc. (Wkrs)	Shelby, NC	01/06/2005	01/03/2005
56,298	GST Autoleather (UNITE)	Fleetwood, PA	01/06/2005	01/05/2005
56,299	Atlas Textile Co., Inc. (Comp)	Commerce, CA	01/06/2005	01/04/2005
56,300	DOBY, Inc. (State)	Newark, NJ	01/07/2005	01/07/2005
56,301	Diamond Products (State)	St. Paul, MN	01/07/2005	01/07/2005
56,302	Tillman of Yuma (Wkrs)	Yuma, AZ	01/07/2005	01/04/2005
56,303	Alcatel USA (Wkrs)	Plano, TX	01/07/2005	01/04/2005
56,304	DIMON, Inc. (Comp)	Rocky Mount, NC	01/07/2005	01/03/2005
56,305	Legend Softballs, Inc. (Comp)	Tullahoma, TN	01/07/2005	01/06/2005
56,306	Jerome Fashions (Wkrs)	S. Elmonte, CA	01/07/2005	01/06/2005
56,307	Carrier Corp. (SMWIA)	Morrison, TN	01/07/2005	01/06/2005
56,308	CFM Home Products (State)	Skokie, IL	01/07/2005	01/06/2005
56,309	Kane Magnetics International (Comp)	Kane, PA	01/10/2005	01/07/2005
56,310	Howell Industries, Inc. (Comp)	Lapeer, MI	01/10/2005	01/07/2005
56,311	Warp Knit Mills, Inc. (Comp)	Lincolnton, NC	01/10/2005	01/03/2005
56,312	CRG-Computer Net Resource Group (NPC1)	Hight Point, NC	01/10/2005	01/07/2005
56,313	Howmet Aluminum Castings (Comp)	Hillsboro, TX	01/10/2005	01/07/2005
56,314	Southern Home Accents (Wkrs)	Abbeville, SC	01/10/2005	01/05/2005
56,315	Hitachi Magnetics Corp. (Comp)	Edmore, MI	01/10/2005	01/03/2005
56,316	American Standard, Inc. (USWA)	Salem, OH	01/10/2005	01/10/2005
56,317	Chelsea Grinding Co. (State)	Jackson, MI	01/10/2005	12/21/2004
56,318	Automatic Lathe Cutter Head (Wkrs)	Hickory, NC	01/12/2005	01/10/2005
56,319	Diversified Engraving Stamp & Machine Co (Wkrs)	Akron, OH	01/12/2005	12/22/2004
56,320	Georgia Gulf Corp. (USWA)	Tiptonville, TN	01/12/2005	12/14/2004
56,321	Honeywell Technology Solutions (NPS)	Rocky Mount, NC	01/12/2005	12/14/2004
56,322	Roseburg Forest Products (WCIW)	Roseburg, OR	01/12/2005	01/11/2005
56,323	Springs Industries (Comp)	Anderson, SC	01/12/2005	01/05/2005
56,324	Southern Wood Products (Comp)	Sparta, TN	01/12/2005	01/20/2005
56,325	Nokia, Inc. (NPW)	Melbourne, FL	01/12/2005	01/11/2005
56,326	Electric Cords, Inc. (Comp)	Lebanon, KY	01/12/2005	12/15/2004
56,327	YSD 2004, Inc. (Wkrs)	Austratown, OH	01/12/2005	12/29/2005

APPENDIX—PETITIONS INSTITUTED BETWEEN 01/03/2005 AND 02/01/2005—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
56,328	Art Leather Manufacturing Co., Inc. (Comp)	San Diego, CA	01/12/2005	01/06/2005
56,329	Spherion (Wkrs)	Las Vegas, NV	01/12/2005	01/10/2005
56,330	Iberia Sugar Cooperative, Inc. (Comp)	New Iberia, LA	01/12/2005	01/05/2005
56,331	Peerless Lighting Corp. (State)	Berkeley, CA	01/12/2005	01/05/2005
56,332	Thomson, Inc. (Comp)	Lancaster, PA	01/13/2005	12/27/2004
56,333	WestPoint Stevens (Comp)	Clemson, SC	01/13/2005	01/11/2005
56,334	E.H. Hall Co., Inc. (Comp)	Westfield, PA	01/13/2005	01/11/2005
56,335	Takata Seat Belts, Inc. (Wkrs)	San Antonio, TX	01/13/2005	01/11/2005
56,336	Graco Children's Products, Inc. (Comp)	Elverson, PA	01/13/2005	01/11/2005
56,337	Sock Company (The) (Wkrs)	Ft. Payne, AL	01/13/2005	01/05/2005
56,338	Wellington Cordage, LLC (Comp)	Eatonton, GA	01/13/2005	01/09/2005
56,339	Mastercraft Fabrics, LLC (Comp)	Cramerton, NC	01/13/2005	01/12/2005
56,340	Keller Furniture, Inc. (NPW)	Louisville, KY	01/13/2005	01/11/2005
56,341	Kaysam Worldwide (State)	Totowa, NJ	01/14/2005	01/14/2005
56,342	Electric Mobility (State)	Sewell, NJ	01/14/2005	01/14/2005
56,343	Dorby Group (Wkrs)	New York, NY	01/14/2005	12/21/2004
56,344	Eagle Picher (Comp)	Manchester, TN	01/14/2005	01/12/2005
56,345	Kohler Company (State)	Searcy, AR	01/14/2005	01/13/2005
56,346	RPI, Inc. (Comp)	Prudenville, MI	01/18/2005	01/06/2005
56,347	Auburn Hosiery Mills, Inc. (Comp)	Auburn, Ky	01/18/2005	01/03/2005
56,348	Holt Hosiery Mills, Inc. (Comp)	Willard, NC	01/18/2005	01/14/2005
56,349	Alexis Play Safe, Inc. (Comp)	Gainesville, GA	01/18/2005	01/14/2005
56,350	Woodbridge Corporation (Comp)	Whitmore Lake, MI	01/19/2005	01/18/2005
56,351	Avanex Corporation (Comp)	Painted Poste, NY	01/19/2005	01/19/2005
56,352	Hydro Gate Corp. (State)	Commerce City, CO	01/19/2005	12/20/2004
56,353	Lear (Wkrs)	Marshall, MI	01/19/2005	01/13/2005
56,354	Flambeau, Inc. (Wkrs)	Baraboo, WI	01/19/2005	01/14/2005
56,355	Graham Steel Corp. (Wkrs)	Kirkland, WA	01/19/2005	01/14/2005
56,356	Eaton Corporation (Wkrs)	Roxboro, NC	01/19/2005	01/18/2005
56,357	WestPoint Stevens, Inc, (Comp)	Middletown, IN	01/19/2005	01/19/2005
56,358	Tranzonic Companies (The) (Comp)	Cleveland, OH	01/19/2005	12/20/2004
56,359	Chace Leather Products (Wkrs)	Montgomery, PA	01/19/2005	01/13/2005
56,360	Wrigley Manufacturing Co., LLC (Comp)	Phoenix, AZ	01/19/2005	01/18/2005
56,361	Hedstrom Corporation (Wkrs)	Arlington Hgts., IL	01/19/2005	01/12/2005
56,362	Aetna US Healthcare (NPS)	Tewksbury, MA	01/19/2005	01/18/2005
56,363	Occidental Chemical Corp. (USWA)	Pottstown, PA	01/19/2005	01/18/2005
56,364	Dunmore Furniture (Wkrs)	Hickory, NC	01/19/2005	01/14/2005
56,365	Glad Manufacturing (A Clorox Co.) (PACE)	Cartersville, GA	01/19/2005	01/13/2005
56,366	Singulus Technologies, Inc. (Wkrs)	Irvine, CA	01/21/2005	12/17/2004
56,367	Columbus Industries (State)	El Paso, TX	01/21/2005	12/21/2004
56,368	EI Dupont/Invista/Kock Industries (Wkrs)	Victoria, TX	01/21/2005	01/11/2005
56,369	Tower Automotive (Comp)	Milwaukee, WI	01/21/2005	01/19/2005
56,370	Meridian Automotive Systems (State)	Dearborn, MI	01/21/2005	12/29/2004
56,371	Springs Industries (Comp)	Ellijay, GA	01/21/2005	01/05/2005
56,372	DyStar LP (Comp)	Charlotte, NC	01/21/2005	01/20/2005
56,373	Halo Holdings LC (State)	Hialeah, FL	01/21/2005	01/19/2005
56,374	Napco Window Systems (USWA)	Sarver, PA	01/21/2005	01/19/2005
56,375	Cooper Power Systems (State)	Fayetteville, AR	01/21/2005	01/20/2005
56,376	Blue Mountain Wall Coverings (Comp)	Knoxville, TN	01/21/2005	01/17/2005
56,377	Culp Weaving (Wkrs)	Pageland, SC	01/21/2005	01/20/2005
56,378	Masonite Door Corporation (Comp)	Richmond, IN	01/21/2005	01/20/2005
56,379	Pride Manufacturing Co., LLC (Comp)	Florence, WI	01/21/2005	01/19/2005
56,380	Watermark Paddlesports, Inc. (Comp)	Arcata, CA	01/21/2005	01/18/2005
56,381	Dorby Frocks (NPS)	Medley, FL	01/21/2005	01/20/2005
56,382	Paxar Corporation (Comp)	Hillsville, VA	01/24/2005	01/19/2005
56,383	CFM (Wkrs)	Joplin, MO	01/24/2005	12/28/2004
56,384	Valley Knit (Comp)	Fort Payne, AL	01/24/2005	01/21/2005
56,385	Cushion Craft Biederlack Corporation (Comp)	Lisbon Falls, ME	01/24/2005	01/19/2005
56,386	Eagle Family Foods (UFCW)	Wellsboro, PA	01/24/2005	01/06/2005
56,387	Long Manufacturing (Comp)	Sheffield, PA	01/24/2005	01/17/2005
56,388	WestPoint Stevens Inc. (Comp)	Daleville, IN	01/24/2005	01/19/2005
56,389	Coats American (Comp)	Marion, NC	01/25/2005	01/21/2005
56,390	Elmo Technologies LP (Comp)	Fort Worth, TX	01/25/2005	01/03/2005
56,391	AVX Corporation (USWA)	Raleigh, NC	01/25/2005	01/24/2005
56,392	Weyerhaeuser (Comp)	Sweet Home, OR	01/25/2005	01/24/2005
56,393	Morgan A.M.T., Carbon Technology (Comp)	Exeter, RI	01/25/2005	01/13/2005
56,394	BBB Industries (State)	Mira Loma, CA	01/25/2005	01/19/2005
56,395	XALOY (Comp)	New Castle, PA	01/26/2005	01/14/2005
56,396	Goodyear Tire and Rubber Corp. (State)	Lincoln, NE	01/26/2005	12/23/2005
56,397	Bath Unlimited (Wkrs)	RanchoDominquez, CA	01/26/2005	01/20/2005
56,398	Libbey Glass, Inc. (USWA)	Walnut, CA	01/27/2005	01/11/2005

APPENDIX—PETITIONS INSTITUTED BETWEEN 01/03/2005 AND 02/01/2005—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
56,399	Stillman Seals (UNITE)	Carlsbad, CA	01/27/2005	01/07/2005
56,400	Sprint (State)	Wake Forest, NC	01/27/2005	01/21/2005
56,401	Neat Feet Hosiery, Inc. (Comp)	Stoneville, NC	01/27/2005	01/18/2005
56,402	Metal Forming Technologies, Inc. (Wkrs)	Burton, MI	01/27/2005	01/14/2005
56,403	Kulicke and Soffa Industries (Wkrs)	Willow Grove, PA	01/27/2005	01/14/2005
56,404	Dunlop (Wkrs)	Westminister, SC	01/27/2005	01/15/2005
56,405	Nagel U.S. Hanger (Comp)	Caldwell, TX	01/27/2005	01/13/2005
56,406	J-Star Bodco, Inc. (NPC)	Fort Atkinson, WI	01/27/2005	01/26/2005
56,407	MeadWestvaco Corp. (Comp)	Laurel, MD	01/27/2005	01/26/2005
56,408	Emerson White (Comp)	St. Louis, MO	01/27/2005	01/25/2005
56,409	Daikin Clutch Corp. (State)	Belleville, MI	01/27/2005	01/24/2005
56,410	Amalgamated Sugar Co. (BCTGM)	Nyssa, OR	01/27/2005	01/25/2005
56,411	Bayer Corp. Business Services BCBS (NPW)	West Haven, CT	01/27/2005	01/24/2005
56,412	Tiro Industries (State)	Fridley, MN	01/27/2005	01/25/2005
56,413	Electra Gear (State)	Anaheim, CA	01/27/2005	01/25/2005
56,414	Ego Beltex, LLC (Wkrs)	Belmont, NC	01/27/2005	01/21/2005
56,415	Osram Sylvania (Comp)	Lake Zurich, IL	01/27/2005	01/21/2005
56,416	Corning Gilbert (State)	Glendale, AZ	01/27/2005	01/25/2005
56,417	Pride Manufacturing Co. (State)	Guilford, ME	01/28/2005	01/19/2005
56,418	Pfaltzgraft Company (Comp)	Thomasville, PA	01/28/2005	01/27/2005
56,419	Schneider Electric (Comp)	Oxford, OH	01/28/2005	01/27/2005
56,420	Tyco Electronics (Comp)	Carlisle, PA	01/28/2005	01/19/2005
56,421	Crane Pumps and Systems (Comp)	Salem, OH	01/28/2005	01/25/2005
56,422	Johnson Controls, Inc. (Comp)	Glasgow, KY	01/28/2005	01/25/2005
56,423	Performance, Inc. (Comp)	Graham, NC	01/28/2005	01/26/2005
56,424	Entran Devices, Inc. (State)	Fairfield, NJ	01/28/2005	01/28/2005
56,425	Avalanche Industries (Comp)	Colorado Spring, CO	01/28/2005	01/27/2005
56,426	General Chemical Group (Comp)	Manistee, MI	01/28/2005	01/25/2005
56,427	Ja-Mar Apparel Mfg. Co., Inc. (State)	Irwindale, CA	01/28/2005	01/21/2005
56,428	Magneti Marelli Powertrain-USA, LLC (Comp)	Farmington Hills, MI	01/28/2005	01/03/2005
56,429	Jowett Garments (Wkrs)	S. El Monte, CA	01/28/2005	01/21/2005
56,430	QAP, Inc. (Wkrs)	W. New York, NJ	01/28/2005	01/27/2005
56,431	Kennedy Die Castings, Inc. (Comp)	Worcester, MA	01/28/2005	01/03/2005
56,432	Freescale Semiconductor, Inc. (Wkrs)	Tempe, AZ	01/31/2005	01/24/2005
56,433	Armstrong World Industries, Inc. (USWA)	Lancaster, PA	01/31/2005	01/27/2005
56,434	Metso Minerals Industries, Inc. (Comp)	Keokuk, IA	01/31/2005	01/27/2005
56,435	Nagle Industries (IAM)	Cumberland City, TN	01/31/2005	01/28/2005
56,436	Bauhaus (State)	Belmont, MS	01/31/2005	01/11/2005
56,437	Assem-tech., Inc. (State)	Grand Haven, MI	01/31/2005	01/20/2005
56,438	HiTech Comact (State)	Hot Springs, AR	01/31/2005	01/27/2005
56,439	Dietrich Industries (Wkrs)	Hammond, IN	01/31/2005	01/28/2005
56,440	Bailey Knit Corp. (Comp)	Fort Payne, AL	01/31/2005	01/26/2005
56,441	Lusero Corp. (Comp)	Longmont, CO	01/31/2005	01/28/2005
56,442	Laurent Leather (Wkrs)	Newton, NC	01/31/2005	01/19/2005
56,443	CM Products Company (The) (Comp)	Manchester, TN	01/31/2005	01/27/2005
56,444	JDS Uniphase Corporation (Comp)	Melbourne, FL	01/31/2005	01/28/2005
56,445	International Apparel Group (Comp)	Allendale, SC	01/31/2005	01/28/2005
56,446	Old Mother Hubbard (Comp)	Lowell, MA	01/31/2005	01/26/2005
56,447	BASF Corporation (Comp)	Morganton, NC	02/01/2005	01/31/2005
56,448	LM Services, LLC (Wkrs)	Cumberland, MD	02/01/2005	01/27/2005
56,449	Fisher Scientific Co. (Comp)	Indiana, PA	02/01/2005	01/31/2005
56,450	Quality Apparel, Inc. (Comp)	Dillon, SC	02/01/2005	01/19/2005
56,451	Allow Engineering and Casting Co. (Comp)	Champaign, IL	02/01/2005	01/29/2005
56,452	Sanmina—SCI Corporation (State)	San Jose, CA	02/01/2005	01/31/2005
56,453	Southwestern Bell (Wkrs)	Jonesboro, AR	02/01/2005	01/11/2005
56,454	G.E. Aircraft Engines Services (Wkrs)	Dallas, TX	02/01/2005	01/27/2005
56,455	Xsensible Footwear North America (Wkrs)	Hickory, NC	02/01/2005	01/17/2005
56,456	Parker Cone Co., Inc. (Comp)	Maiden, NC	02/01/2005	01/18/2005
56,457	Swenco Co—Posi Products (State)	Poplar Bluff, MO	02/01/2005	01/24/2005
56,458	Arthur G. Russell Co., Inc. (The) (Comp)	Bristol, CT	02/01/2005	02/01/2005
56,459	MMG Corporation (UNITE)	St. Louis, MO	02/01/2005	02/01/2005
56,460	Ameriwood (UNITE)	Wright City, MO	02/01/2005	01/28/2005

[FR Doc. E5–697 Filed 2–22–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,277]

Glenshaw Glass Company, Glenshaw, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 3, 2005, in response to a petition filed by the United Steelworkers of America on behalf of workers at Glenshaw Glass Company, Glenshaw, Pennsylvania. Workers at the subject plant produced glass containers. The plant shut down on November 22, 2004.

The present petitioner represents a subgroup of workers at the facility who were engaged in the maintenance and repair of mold equipment for the production of glass containers.

The Department of Labor issued a negative determination applicable to all workers at the subject facility on December 1, 2004 (TA–W–55,898). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 28th day of January, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–710 Filed 2–22–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,214 and TA–W–56,214A]

Pfaltzgraff Company, Pfaltzgraff Distribution Center, York, PA, and Pfaltzgraff Company, Thomasville, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 13, 2004, in response to a petition filed by a company official on behalf of workers at Pfaltzgraff Company, Pfaltzgraff Distribution Center, York, Pennsylvania (TA–W–56,214) and Pfaltzgraff Company, Thomasville, Pennsylvania (TA–W–56,214A).

The petitioner has requested that the petitions be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 26th day of January, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–702 Filed 2–22–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,256]

Rehau Incorporated, Sturgis Plant, Sturgis, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 28, 2004 in response to a petition filed by a company official on behalf of workers at Rehau, Incorporated, Sturgis Plant, Sturgis, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 5th day of January, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–709 Filed 2–22–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W 56,230 and TA–W 56,230A]

Spang and Company, Magnetics Division, East Butler, PA, and Bonneville, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 17, 2004, in response to a petition filed by a company official on behalf of workers at Spang and Company, Magnetics Division, East Butler, Pennsylvania, and Spang and Company, Magnetics Division, Bonneville, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 24th day of January, 2005.

Richard Church

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–708 Filed 2–22–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,371]

Springs Industries, Ellijay, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 21, 2005, in response to a petition filed by a company official on behalf of workers at Springs Industries, Ellijay, Georgia.

The petitioning group of workers is covered by an earlier petition (TA–W–56,295) filed on January 5, 2005, that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed in Washington, DC, this 24th day of January, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–712 Filed 2–22–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,143]

Tee Jays Manufacturing Company, Inc., Florence, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 6, 2004, in response to a petition filed by a company official on behalf of workers at Tee Jays Manufacturing Company, Inc., Florence, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 19th day of January, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–699 Filed 2–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,796]

Venture Industries, Lancaster Ohio Plant, Lancaster, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 19, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding the eligibility for workers of Venture Industries to apply for trade adjustment assistance. The denial notice applicable to workers of the subject firm located Lancaster, Ohio, was signed on June 25, 2004, and was published in the **Federal Register** on August 3, 2004 (69 FR 46574).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

In the request for reconsideration of the petition denial, the petitioner claims that worker separations were ''due to the circumstances of the Venture Pegaform plant in Germany being in financial trouble, profits from the American plants were used to help get this facility back to where it could turn a profit, therefore leaving the American Venture Plants in financial trouble.'' The petitioner adds that the money used for the Venture Pegaform plant in Germany could have kept the Lancaster, Ohio plant open.

In order for the workers of the subject firm to be certified eligible to apply for trade adjustment assistance, the worker group eligibility requirements of section 222 of the Trade Act of 1974, as amended, must be met.

(1) A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) The sales or production, or both, of such firm or subdivision have decreased absolutely;

(ii) Imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and

(iii) The increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(B)(i) There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

(ii)(I) The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

(II) The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

(III) There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

The worker group eligibility requirements described above does not contain a provision for a shift of profits from a U.S. firm to a firm in a foreign country.

The workers of Venture Industries, Lancaster Ohio Plant, Lancaster, Ohio, produced sheet/fiberglass molding compound for exterior automotive parts. The Department's initial investigation determined that during the relevant period (from 2002 through April 2004) there were no imports by the firm or its customers of like or directly competitive products. Furthermore, the subject firm did not shift production of sheet/fiberglass molding compound from the Lancaster, Ohio plant to a foreign country.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 22nd day of December, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–698 Filed 2–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance Program: Training and Employment Guidance Letter

The Employment and Training Administration interprets Federal law requirements pertaining to Trade Adjustment Assistance (TAA). These interpretations are issued in Training and Employment Guidance Letters (TEGLs) to the State Workforce Agencies. The TEGL described below is published in the **Federal Register** in order to inform the public.

TEGL 2–03, Change 1, clarifies the interim operating instructions published in TEGL 2–03, and TEGL 2–03, Change 2, amends operating instructions issued in TEGL 2–03 and TEGL 2–03, Change 1.

TEGL 2–03 Change 1

TEGL 2–03 provided interim operating instructions for states to use in implementing the ATAA program. TEGL 2–03, Change 1, provides answers to questions the Department received concerning the operation of the ATAA program. The attachment restates the questions raised and provides the answers to those questions.

TEGL 2–03, Change 2

This TEGL modifies TEGL 2–03 and TEGL 2–03, Change 1, to allow certain certified worker groups to apply for ATAA retroactively. This will include workers who filed a petition using a form that did not include an opportunity to indicate whether or not the petitioner wished to request ATAA certification, and who either had a petition in process on August 6, 2003, or filed a petition on or after that date.

The instructions in TEGL 2–03, Change 1 and Change 2, are issued to the states and the cooperating state workforce agencies (SWAs) as guidance provided by the U.S. Department of Labor in its role as the principal in the TAA program. As agents of the Secretary of Labor, the states and cooperating SWAs may not vary from the instructions in TEGL 2–03, Change 1 and Change 2, without prior approval from the Department.

Dated: February 16, 2005.

Emily Stover DeRocco,

Assistant Secretary of Labor.

BILLING CODE 4310–30–M

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL ONR
	DATE July 14, 2004

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 2-03, Change 1

TO: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE LIAISONS

FROM: EMILY STOVER DeROCCO
Assistant Secretary

SUBJECT: Alternative Trade Adjustment Assistance (ATAA) for Older Workers Questions and Answers

1. **Purpose.** To answer questions related to the administration of the Alternative Trade Adjustment Assistance (ATAA) program that have arisen since the issuance of Training and Employment Guidance Letter (TEGL) No. 2-03.

2. **References.**

   - Trade Act of 1974 (Pub. L. 93-619, as amended)
   - Trade Act of 2002 (Pub. L. 107-210)
   - The Workforce Investment Act of 1998
   - 20 CFR Part 617
   - 29 CFR Part 90
   - TEGL No. 11-02
   - Unemployment Insurance Program Letter (UIPL) No. 24-03
   - TEGL No. 2-03.

   The amendments to the Trade Adjustment Assistance (TAA) program may also be referred to as the Trade Adjustment Assistance Reform Act of 2002 (the Act or the Trade Act). These amendments were included in Title I of the Trade Act of 2002.

3. **Background.** TEGL No. 2-03 provided interim operating instructions for states to use in implementing the ATAA program. Since the issuance of TEGL 2-03, the Department has received questions concerning the operation of the ATAA program. The attachment restates the questions raised and provides the answers to those questions.

RESCISSIONS	EXPIRATION DATE Continuing

4. **Action Required.** State administrators should distribute this advisory to appropriate staff. States must adhere to the requirements of federal law that are contained in this advisory.

5. **Inquiries.** States should direct all inquiries to the appropriate ETA Regional Office.

Attachment: Alternative Trade Adjustment Assistance (ATAA) Questions and Answers

Attachment

ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE (ATAA) QUESTIONS AND ANSWERS

Withholding

1. Q: Are ATAA benefits taxable income?

   A: Yes. ATAA wage subsidies are taxable income. You will need to issue a 1099 to recipients of the ATAA payments.

2. Q: Are pensions deductible from ATAA benefits, as with Unemployment Insurance (UI) payments?

   A: No. The Trade Act of 1974, as amended, did not direct that pensions be included in the calculation of the ATAA wage subsidy.

3. Q: How do state workforce agencies (SWAs) determine whether to deduct court-ordered child support payments from ATAA payments?

   A: ATAA payments are to be treated in the same manner as trade readjustment allowances (TRA). State laws regarding deductions of payments from UI and TRA must follow the Social Security Act (SSA). SSA Section 303(e)(1) defines "child support obligations" as "only includ[ing] obligations which are being enforced pursuant to a plan described in Section 454 of this Act which has been approved by the Secretary of Health and Human Services under part B of title IV of this Act." It therefore does not permit deductions for alimony or for child support in general, as provided by 20 CFR 617.55(h)(2), but only for child support obligations of the type specified. Unemployment Insurance Program Letter No. 45-89 (55 Fed. Reg. 1886 (1990)) explained in detail the deductions permitted under SSA Section 303(e)(2).

ATAA and UI

4. Q: Must the individual file for a UI claim in order to be eligible for ATAA? Does the worker have to be eligible for UI to be eligible for ATAA?

   A: No. There is no provision in the Trade Act or TEGL 2-03 that requires an individual to apply for UI in order to be eligible for the ATAA program. Nor is there a provision that requires an individual to be eligible for UI. ATAA and UI are statutorily separate programs. Eligibility for neither program is dependent on the other program.

5. Q: Can the ATAA wage subsidy be considered as income for the purpose of establishing eligibility for future UI claims?

A: The Trade Act does not direct that wage subsidies be reported as "wages" for UI purposes. However, UI eligibility is governed by state law. Therefore, states may consult their own UI law to determine if ATAA meets the state definition of wages for UI purposes.

6. Q: How should the SWA administer recovery of UI overpayments from ATAA, or recovery of ATAA payments from UI?

A: ATAA payments are to be treated in the same manner as trade readjustment allowances (TRA). Recovery of a state UI overpayment from ATAA is governed by SSA Section 303(g)(2), requiring an agreement with the Department before the state may offset ATAA to recover the state UI overpayment. Further, if the state does have such an agreement with the Department, there is no limit on the amount of the offset from ATAA.

Section 243(a)(2) of the Trade Act limits each deduction from state UI to recover a TAA or ATAA overpayment to a maximum of 50% of the payment. However, that applies only to the offset of state UI to recover a TAA or ATAA overpayment. It does not apply to the offset of TAA or ATAA to recover a state UI overpayment.

7. Q: Does the ATAA program in any way alter UI rules in a state?

A: No. ATAA does not change any UI rules. UI must still be administered in accordance with established instructions. A person receiving ATAA has returned to work and should be treated like anyone else returning to work. UI payments are not part of the calculation to determine the ATAA wage subsidy.

8. Q: If an ATAA recipient is laid off, can he/she reopen a UI claim that still has an unexpired benefit year? Does the state issue a written determination to the individual suspending ATAA until he/she is reemployed?

A. The worker may reopen his/her UI claim that still has an unexpired benefit year or file a new claim if the benefit year has ended in accordance with state UI law. In accordance with TEGL 2-03, Section F, a determination suspending the ATAA benefit is required if the individual attempts to claim ATAA benefits after separation. If the worker is reemployed, he/she may file a new ATAA application.

9. Q: Will the state UI office have the responsibility for administering the wage subsidy for ATAA recipients as they do for TRA recipients?

A: States have the choice of where they want to locate the responsibility. However, the organizational placement of this payment by the state must meet Governmental Accounting Standards Board requirements.

10 Q: Do UI laws apply to ATAA recipients?

A. No. An ATAA recipient is not eligible for UI because he/she is employed on a full-time basis as defined by state law in the state the worker is employed. Unless otherwise specified in an official advisory or regulation, no UI-related issue should influence the continued receipt of the wage subsidy. If, however, the ATAA recipient becomes unemployed and files for UI, then the state UI law would be applied to any potential UI entitlement.

11. Q: Is an ATAA recipient eligible for a new UI claim once the current benefit year expires?

A: No. An ATAA participant is not eligible for UI unless he/she becomes unemployed, at which time he/she becomes ineligible for ATAA.

12. Q: Where does the ATAA wage subsidy fit into the priority of payments, i.e., UI, Temporary Extended Unemployment Compensation (TEUC), basic TRA, additional TRA, and remedial TRA?

A: ATAA does not fit into this priority of payments because it is not related to UI. UI and ATAA are two separate programs that operate independently. UI is for individuals who are unemployed; ATAA is for individuals who are employed.

Full-Time Employment

13. Q: Must re-employment for ATAA purposes be "UI covered" employment?

A: No. Full-time employment need not be UI covered employment. However, since Section 246 of the Trade Act requires that a participant in ATAA must be employed full-time as defined by state law, the state workforce agency (SWA) must determine if the employment (including self-employment) obtained by the potential ATAA recipient meets the definition of full-time employment under the applicable state law.

14. Q: Can self-employment or work involving wages plus commission or piece work be considered full-time employment for the purpose of establishing ATAA eligibility?

A: Yes. Self-employment, work involving wages plus commission, or piece work can be considered full-time employment for the purpose of establishing ATAA eligibility if such employment meets the definition of full-time employment as defined by the state.

15. Q: If self-employment, work involving wages plus commission, or piece work qualify as reemployment, how would the income derived from these types of employment be used in calculating the ATAA wage subsidy?

A: The SWA should determine an approximation of the hourly wage and apply the

approximation when calculating the wage subsidy in accordance with procedures established in TEGL 2-03, Section G.

16. Q: If a worker applying for ATAA is hired by a temporary agency for a two-week period, should the SWA deny ATAA benefits because it is a short-term temporary assignment?

A: No. The ATAA program addresses full-time employment without distinction between temporary and permanent employment. This puts additional responsibility on the SWA caseworker who must inform the ATAA applicant that receipt of an ATAA wage subsidy gives up all future rights to TRA, job search allowances, and training. Since in this instance the temporary employment expires after two weeks, the worker needs to be advised that ATAA payments will cease at the end of the two weeks, as will eligibility for the Health Coverage Tax Credit (HCTC).

17. Q: Are workers participating in on-the-job training (OJT) under TAA or WIA eligible for the ATAA program?

A: No. While such training is potentially consistent with state definitions of full-time employment, the federal government is already subsidizing a portion of the worker's wages. Payment of the ATAA wage subsidy would essentially be "double dipping." This is true whether funded by TAA, WIA, or any other federal training program. Moreover, if funded by TAA, participation in OJT training automatically precludes eligibility for ATAA.

However, if a participant in WIA-funded OJT (or any federally subsidized employment from any funding source except TAA) completes his/her training and obtains full-time unsubsidized employment before the end of the 26-week ATAA eligibility period, the individual could be eligible for an ATAA wage subsidy.

18. Q: In the event that an ATAA recipient's hours are reduced to less than full-time, but he or she remains employed by the employer, does he or she lose ATAA benefits while working less than full-time?

A: Yes. Section 246 of the Trade Act requires that an individual be employed full-time as defined by state law. Therefore, any individual whose hours are reduced below full-time, as defined by state law, loses his/her ATAA benefits, including HCTC eligibility. It should also be noted that such an individual remains potentially eligible for ATAA for a period of up to two years from the date of qualifying reemployment, should such individual return to full-time work.

19. Q: Assume that an ATAA participant, who is employed full-time, is on unpaid leave for two days during a specific week. Would the individual be considered to be employed full-time during this week and eligible for an ATAA wage subsidy?

A: The state must look to state law to determine whether this meets the definition of

full-time employment.

Continuing Eligibility

20. Q: Section F (Continuing Eligibility) of TEGL 2-03 states that "In the event of a period of unemployment, workers will need to complete a new Individual Application for ATAA upon reemployment." If an employer has a regularly scheduled shutdown for one or two weeks, would the ATAA recipient have to reapply for the wage subsidy after the shutdown is complete or is reapplication necessary only when an individual is laid off and finds new employment?

    A: The state must look to state law to determine whether this meets the definition of full-time employment. If it is not inconsistent with state law, in cases where the workers are paid their regular wage during the period of the shutdown, this does not disqualify them from receiving ATAA. As indicated in Section F (Continuing Eligibility) of TEGL 2-03, not receiving wages for one full week is considered unemployment and makes a worker ineligible for ATAA. Moreover, during a regularly scheduled shut-down for a two-week period where a worker is not receiving wages, the worker may be eligible for UI for that two-week period. In any case, the worker would not be eligible for ATAA during this period unless wages were being paid during this period by the employer.

21. Q: If a person receiving an ATAA wage subsidy quits or is fired from his/her job, and finds another job, can he/she resume receiving the ATAA payment?

    A: Yes. In accordance with TEGL 2-03, Section F, a worker can reapply for ATAA when he/she obtains subsequent employment for up to two years from the date of original reemployment.

22. Q: Are all wages and hours from all employment (including overtime) to be included in the calculation of the wage subsidy and the calculation of the annual reemployment wage to determine if the $50,000 limit is exceeded for determining ATAA eligibility?

    A: As provided in TEGL 2-03, Section G, overtime wages are not included in the calculation of the annualized pre-separation or reemployment wage for determining eligibility for, and the amount of, the ATAA wage subsidy. Wages from all employment, excluding overtime pay, would be included in the annualized wage calculation for both the pre-separation wage and the reemployment wage.

23. Q: If a worker had a full- and part-time job and is laid off from the full-time position due to foreign trade, would his/her part-time wages be included in the formula for calculating pre-separation wages?

    A: Yes. Wages from all employment, full- or part-time, are taken into account when calculating the ATAA wage subsidy.

24. Q: Why are full- and part-time jobs used to determine a worker's annual wages for calculating an ATAA wage subsidy?

A: Section 246 of the Trade Act provides that the wage subsidy provides 50 percent of the difference between the wages received by the worker from reemployment and the wages received by the worker at the time of separation. The statute does not specify that the reemployment wages include only a single job or that the pre-separation wages are only those earned in the adversely affected employment.

25. Q: Why are overtime wages excluded from a worker's annual wage calculation in determining his or her ATAA wage subsidy?

A: Overtime wages are excluded due to their sporadic nature and the difficulty of projecting the level of such wages. Further, it avoids placing the worker in the awkward position of choosing whether to accept overtime hours where he/she either risks losing the ATAA wage subsidy or his/her job. Such a position is contrary to sound business-friendly practice.

26. Q: TEGL 2-03 does not permit telephone certification for establishing continuing eligibility. Documentation of employment, hours and wages must be provided at each continuing eligibility verification session. Does this requirement apply in those instances where the employer telephones with the necessary verification information and the results of that call are documented by state or local TAA staff?

A: Yes. The requirement for documentation of employment, hours, and wages provides hard evidence of the worker's employment and serves as a deterrent to fraud. However, the worker could send a copy of his/her check stub or a letter from the employer by mail or fax if unable to physically visit the state office.

Amount and Frequency of Payments

27. Q: TEGL 2-03 requires that the ATAA recipient will receive at least a minimum monthly payment. Can you explain what this means?

    A: It means that the ATAA wage subsidy may be paid on a weekly, biweekly, or other payment frequency but at a minimum must be paid monthly. This allows the state to determine what type of payment frequency is most compatible with the systems it currently uses to pay benefits to recipients. Having at least a monthly payment frequency does not mean that the worker must receive some minimum amount each month.

28. Q: Is there a minimum or maximum weekly benefit amount that can be paid?

    A: No. The benefit amount is based on the calculation of the ATAA wage subsidy provided in TEGL 2-03 and the frequency of the payment.

29. Q: Can the amount of the ATAA wage subsidy fluctuate during the course of the two-year eligibility period?

    A: Yes. The amount of the ATAA wage subsidy may vary week by week based on a change in the hours paid, or hourly wage or wage approximation. The SWA must recalculate the amount of the ATAA wage subsidy every time the individual returns for the monthly (or more frequent) verification of continuing eligibility in accordance with TEGL 2-03, Section G.

30. Q: In calculating an individual's ATAA payment, how does the SWA define the payable period for an ATAA wage subsidy?

    A: In accordance with TEGL 2-03, Section G, the payable period is at the option of the state but in no case should it be less frequently than monthly.

31. Q: How do severance pay and wages in lieu of layoff notice (e.g., 60 day WARN notice or other employer separation notice) affect the ATAA wage subsidy calculation?

    A: Severance pay and wages in lieu of layoff notice have no effect on the ATAA wage subsidy because the ATAA calculation should be based on the hourly wage and hours worked during the last full week of employment as described in TEGL 2-03, Section G. Wages received as severance or in lieu of layoff notice should not be part of the calculation.

32. Q: What documentation is acceptable for the purposes of establishing both initial and continuing eligibility?

A: Depending on the specific eligibility criterion, documentation may include materials such as a drivers license, birth certificate, copy of job offer letter, check stub, document referring to date of qualifying separation, supporting statement from the employer, annual earnings statements, W-2 forms, and/or other official documentation.

33. Q: If a worker earned $50 per hour in pre-separation employment, and later takes a job at XYZ Corporation at $10 an hour, would the worker receive an ATAA wage subsidy of $800 per week?

A: Yes, but in this example the worker will reach the $10,000 wage subsidy limit in approximately 12 weeks, assuming a 40-hour week in both the pre-separation employment and reemployment. There is an incentive for workers to take a job at wages as close to their pre-separation wage as possible in order to prolong the period in which they receive the ATAA wage subsidy and correspondingly prolong eligibility for HCTC.

34. Q: Do SWAs need to keep a computerized record of all information needed to calculate and pay an ATAA wage subsidy or can manual methods be utilized?

A: The state has the option to maintain computerized or manual record systems.

Funding Source

35. Q: What is the funding source for ATAA in Fiscal Year (FY) 2004 and are changes expected for FY 2005?

A: The funding source for ATAA wage subsidies is the Federal Unemployment Benefit Account (FUBA). The administration of ATAA wage subsidies will be paid from the State Unemployment Insurance and Employment Service Operations (SUIESO) account. Instructions for accessing the SUIESO account for administrative purposes were transmitted to the states in Unemployment Insurance Program Letter (UIPL) 14-04 on March 1, 2004. Once the methodology is finalized, it will be made available to states. In addition, TAA training and associated administrative costs, TRA payments, and job search and relocation allowances are funded from FUBA. Administration for TRA payments is funded through SUIESO. Changes are not expected for FY 2005, but if they occur an official announcement will be prepared.

For FY 2004, the total amount available for the wage subsidy program is $10 million. The FY 2005 budget requests an increased amount for the wage subsidy program. This request is pending congressional action and has not been approved.

Eligibility Period/Retroactivity

36. Q: Since the impact date is a year before the petition date, some workers who are certified eligible to apply for ATAA will have been separated as much as a year before the certification and will have become reemployed well before the certification is issued. In these cases, if workers apply and qualify for ATAA, can they receive a retroactive payment for the period they were employed prior to the date of ATAA certification? Could these workers receive a lump-sum payment of $10,000 if the difference between pre-separation and reemployment wages were sufficient to warrant such a payment? Would this also apply to workers who do not apply for the subsidy until the end of the eligibility period?

    A: TEGL 2-03, Section E, provides that the two year eligibility period for receiving ATAA payments begins with the first day of the ATAA qualifying reemployment and that the individual has two years from that date to apply. This means that the payments may be made retroactively if the worker has obtained qualifying reemployment within 26 weeks of layoff and later applies for the program. In addition, a lump-sum payment is possible if the difference between pre-separation and reemployment wages were sufficient to warrant such a payment.

37. Q: What is the rationale for allowing workers two years from their date of qualifying reemployment to file their application for ATAA?

    A: TEGL 2-03, Section E, states that the application for ATAA must be filed within two years of the first day of qualifying reemployment. This parallels Section 246 of the TAA Reform Act of 2002, which provides that the ATAA wage subsidy may be paid over a two-year period.

Initial Eligibility

38. Q: Must a worker be working or just offered full-time work within 26 weeks of their date of separation to be eligible for an ATAA wage subsidy?

    A: TEGL 2-03, Section E, states that the worker must obtain reemployment by the last day of the 26th week after the worker's qualifying separation from TAA/ATAA certified employment. This means that the worker's first day of employment must have occurred during the 26-week period.

39. Q: ATAA eligibility requires that the worker may not return to similar work for the employer from whom he/she separated. Does the state define "similar" work?

A: Yes. When an ATAA applicant accepts work with their layoff employer at a different location, the state is responsible for determining whether the work is similar. In addition, the individual cannot return to the division/facility from which he/she was separated, even if the work is not similar.

40. Q: If a worker applies for ATAA and is denied eligibility because annual earnings are in excess of $50,000, can the worker reapply and be found eligible for ATAA if he/she is separated from this job (voluntarily or otherwise) and finds new employment at less than $50,000?

A: If the individual is issued a determination denying eligibility for an ATAA wage subsidy based on the first reemployment because the reemployment did not meet the conditions to qualify for an ATAA wage subsidy, and if the individual is subsequently separated and finds a new job that does meet the conditions for ATAA, then a new ATAA application will have to be submitted. In this case, since the first reemployment did not qualify the individual for ATAA it cannot be used to establish qualifying reemployment within 26 weeks. Therefore, the subsequent full-time employment must occur within the 26 weeks from the qualifying separation to be considered for the ATAA subsidy.

41. Q: In the event a worker applies for ATAA and is denied by virtue of being 49 years old, would the worker qualify when he/she turns 50 and is still reemployed?

A: TEGL 2-03, Section E, requires that an individual be 50 years of age at the time of reemployment to be considered for the ATAA wage subsidy. Therefore, a worker denied by virtue of being 49 years old would not qualify if he/she turns 50 and is still reemployed in the same job. However, in the unusual circumstance that the worker becomes separated from the initial reemployment and is reemployed again within 26 weeks from his/her qualifying separation and has turned 50, he/she may be eligible for the ATAA wage subsidy at that time.

Benefit Receipt and Point of Disqualification

42. Q: If a worker exhausts his/her UI entitlement prior to the 26-week deadline for obtaining reemployment for ATAA purposes, can that worker receive TRA without losing all future eligibility for ATAA?

A: Yes. TEGL 2-03, Section E, specifies that workers give up their right to ATAA when they receive TAA-approved training. If the worker has exhausted his/her UI eligibility associated with the first benefit period at the time of layoff, it is possible to receive TRA benefits with a training waiver during the 26 weeks between layoff and obtaining qualifying reemployment for ATAA. Receipt of TRA will not void their right to choose ATAA, not will receipt of a job search allowance.

43. Q: Does participation in WIA training prior to or after TAA certification exclude the worker from eligibility for the ATAA program?

A: WIA training that is not TAA-approved does not disqualify someone from receiving the ATAA wage subsidy. TEGL 2-03, Section E, specifies that TAA-approved training does disqualify an individual from receiving the ATAA wage subsidy.

44. Q: What documentation is necessary to meet the requirement in TEGL 2-03 that a worker must choose between TAA and ATAA participation?

A: While Section E of TEGL 2-03 does not specify a requirement for documenting a worker's choice between TAA and ATAA, it does indicate that receipt of the first ATAA wage subsidy or enrollment in training will attest to this choice. However, states are free to establish their own documentation requirements for this purpose.

45. Q: Is it true that workers do not give up rights to TAA benefits until they receive the first ATAA payment?

A. Yes.

Petition Process

46. Q: For ATAA purposes, when determining whether the worker group possesses "skills that are not easily transferable" to other employment, will the determination address the skills of all workers at the affected firm, only the separated workers, all workers over age 50, or only separated workers over the age of 50?

A: The determination addresses the skills of the petitioning worker group, which may include individuals both above and below age 50.

47. Q: What does "skills that are not easily transferable" mean?

A: "Skills that are not easily transferable" refer to a set of skills that do not enable a worker to quickly obtain employment in a similar kind of work (e.g., a job at an equal or higher wage and skill level in the local labor market).

48. Q: May petitioners provide additional documentation in support of the TAA or ATAA petition?

A: Yes. Petitioners may, and are encouraged to, submit documentation that supports the specific criteria for TAA and/or ATAA certification with their petition.

Existing Certifications

49. Q: Is there a mechanism to add a request for ATAA certification to a petition that is already in process?

A: Yes. A request for ATAA certification can be made on a petition that has been received but is still under investigation. In such cases, the petitioner(s) must withdraw the petition and resubmit it with a request for ATAA certification because the Trade Act requires that an ATAA program request be made at the time the petition is filed. This would, however, change the impact date and may lead to workers laid-off more than one year prior to the date of the resubmitted petition being ineligible for TAA or ATAA certification.

50. Q: Is there a mechanism to review a TAA certification in order to add an ATAA certification where a request for ATAA was not indicated on the original petition?

A: No. TEGL 2-03 provides that a request for ATAA consideration must be made at the time the petition is filed and is consistent with Section 246 of the Trade Act, as amended.

Agent State/Liable State

51. Q: What are the responsibilities of the agent state and liable state in administering the ATAA program?

A: For ATAA purposes, the liable/agent state relationship applies only when a worker loses a job in one state, becomes reemployed in another, and is eligible for the ATAA wage subsidy. Under the ATAA program, the liable state is the same as the liable state for the regular TAA program, as described in 20 CFR 617.26(a). In most cases, the liable state is the state where the worker was working and separated from employment. The agent state is the state in which the worker is reemployed. The distinction has nothing to do with the state where the worker resides.

The responsibilities of the liable state include making all determinations of ATAA individual eligibility, issuing all redeterminations of individual eligibility and decisions on appeal, making the ATAA wage subsidy payments, paying relocation allowances, verifying employment, transmitting names of "eligible ATAA recipients" to the HCTC program office in the Internal Revenue Service (IRS), and completing all reports.

The responsibilities of the agent state are cooperating fully with the liable state and assisting the liable state in carrying out its activities and functions. The definition of full-time work for all ATAA participants working in the state is the responsibility of the agent state. Other responsibilities include providing interstate ATAA applicants with ATAA program information, assisting with filing applications, gathering information and forwarding it to the liable state, and

providing the liable state with information needed to make determinations of ATAA individual eligibility initially and on appeal.

Section 426 of the Trade Act specifies that the determination of full-time is based on the state law of the state where the individual is employed. Therefore, as indicated by the above, the liable state will have to make ATAA eligibility determinations based on the agent state's law. There will be instances where the agent state and liable state have different definitions of full-time employment. In these cases, the liable state will find it necessary to use the agent state's definition of full-time employment in making the eligibility determination for the ATAA program.

HCTC

52. Q: If a worker loses eligibility for ATAA due to separation from employment, does the worker lose HCTC eligibility?

A: Yes. The person is only eligible for HCTC for any month in which he/she received an ATAA payment. However, Section 35 of the Internal Revenue Code of 1986, as amended, provides eligibility for a grace period of one calendar month after the month in which the worker stops receiving the ATAA wage subsidy.

53. Q: Does receipt of only a relocation allowance under the ATAA program make the individual worker an "eligible ATAA recipient" for HCTC purposes for that month?

A: No. The definition of an "eligible ATAA recipient" provided in Section 35 of the Internal Revenue Code is an individual receiving the wage subsidy for that month.

Waivers

54. Q: Are there reasons where it would be appropriate to issue training waivers to ATAA-eligible individuals?

A: Workers who are interested in ATAA but do not yet have qualifying reemployment may wish to preserve their option to choose between TAA and ATAA while they search for ATAA-qualifying reemployment, or they may need to access the HCTC. In cases where one of the waver criteria is met, a waiver could be used to establish HCTC eligibility or to preserve the worker's option to access regular TAA benefits if he/she is unable to secure appropriate ATAA-qualifying reemployment.

Section E of TEGL 2-03 describes the various options available in granting waivers for these purposes. The use of waivers should be evaluated carefully and should also be consistent with guidance contained in TEGL 11-02 and 11-02, Change 1.

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL ONR
	DATE October 29, 2004

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 2-03, Change 2

TO: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE LIAISONS
ALL ONE-STOP CENTER SYSTEM LEADS
ALL STATE TRADE COORDINATORS

FROM: EMILY STOVER DeROCCO
Assistant Secretary

SUBJECT: Requests for Certification under the Alternative Trade Adjustment Assistance (ATAA) Program for Certain Worker Groups Covered by Certified TAA Petitions

1. **Purpose.** To amend the operating instructions issued in Training and Employment Guidance Letter (TEGL) No. 2-03 and 2-03, Change 1, to permit certain worker groups previously certified under the Trade Adjustment Assistance (TAA) program to now request ATAA program certification.

2. **References.** Trade Act of 1974 (Pub. L. 93-619, as amended); Trade Act of 2002 (Pub. L. 107-210); Workforce Investment Act of 1998 (Pub. L. 105-220); 20 CFR Part 617; 29 CFR Part 90; TEGL No. 11-02, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002;" TEGL No. 2-03, "Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002;" TEGL No. 2-03, Change 1, "Alternative Trade Adjustment Assistance (ATAA) for Older Workers Questions and Answers."

3. **Background.** TEGL No. 2-03 provided interim operating instructions for states to use in implementing the ATAA program. TEGL No. 2-03, Change 1, provided answers to questions the Department received concerning the operation of the ATAA program. Since TEGL No. 2-03 and 2-03, Change 1, were issued, the Department has received inquiries from several worker groups who filed petitions for TAA shortly before the August 6, 2003, implementation of the ATAA program, and whose petitions were still in process at the time of implementation. The

RESCISSIONS	EXPIRATION DATE Continuing

petitioners for these groups were not aware that they could have withdrawn their petitions and re-filed them with a request for ATAA certification on or after August 6, 2003.

In addition, the Department has received several inquiries from worker groups who filed petitions on or after August 6, 2003, but who were unaware that petitioners are required to request ATAA consideration at the time the petition is filed, if they wish to establish ATAA eligibility.

In order to provide equitable access to ATAA, the Department is amending the operating instructions issued in TEGL No. 2-03 and 2-03, Change 1, as they apply to worker groups covered by a certified petition that was in process on August 6, 2003 (i.e., filed prior to August 6, 2003 and certified on or after August 6, 2003) and to worker groups that filed their petition after August 6, 2003, who inadvertently used an obsolete form that did not provide an opportunity to indicate whether or not the petitioner wished to request ATAA certification. As explained in section 5, these worker groups (or their authorized representatives) may now request ATAA certification. These amendments do not apply to worker groups covered by a certification issued prior to August 6, 2003, nor do they apply to groups that indicated on the petition form that they did not wish to be considered for ATAA, failed to respond to the question, or that were contacted by the Department and indicated that they did not wish to be considered for ATAA certification at the time the original petition was filed.

4. **Previous Operating Instructions.** TEGL No. 2-03 contains instructions regarding the "Petitioning Process" for establishing ATAA eligibility. On page 2, the instructions require that in order to establish eligibility for ATAA, workers "must file a regular TAA petition, which includes a request that the worker group be considered for eligibility to apply for the ATAA program." Further, on page 3, the instructions provide that "Failure to submit the [request for ATAA certification] with the petition means that DOL will not consider the worker group for certification under the ATAA program."

   TEGL No. 2-03, Change 1, includes clarifications of the requirement to submit an ATAA request at the time the petition is filed. Question 49 of the attachment clarifies that petitioners have the option of withdrawing their petition and re-filing:

   "Q: Is there a mechanism to add a request for ATAA certification to a petition that is already in process?

   A: Yes. A request for ATAA certification can be made on a petition that has been received but is still under investigation. In such cases, the petitioner(s) must withdraw the petition and resubmit it with a request for ATAA

certification because the Trade Act requires that an ATAA program request be made at the time the petition is filed."

Question 50 clarifies that once a certification is made, there is no mechanism to request ATAA certification:

"Q: Is there a mechanism to review a TAA certification in order to add an ATAA certification where a request for ATAA was not indicated on the original petition?

A: No. TEGL No. 2-03 provides that a request for ATAA consideration must be made at the time the petition is filed and is consistent with Section 246 of the Trade Act, as amended."

This Change 2 amends the requirement to submit an ATAA request at the time the petition is filed for worker groups that are covered by the certification of a petition that was in process on August 6, 2003, or that filed their petition after August 6, 2003, using an obsolete form that did not allow them to indicate whether or not the petitioner(s) wished to request ATAA certification.

5. **Revised Operating Instructions.** Worker groups that are covered by the certification of a petition that was in process on August 6, 2003, or that filed their petition after August 6, 2003, using an obsolete form that did not allow the petitioner(s) to indicate whether or not they wished to request ATAA certification (except petitioners that were contacted by the Department and stated that they did not wish to be certified for ATAA) may now request ATAA consideration for the certified worker group. The request must be made to the Department and may be made by anyone who was entitled to file the original petition under section 221(a)(1) of the Act (i.e., three workers in the worker group covered by the certification, the union or other duly authorized representative, the employer, the state workforce agency, or a One-Stop operator or One-Stop partner). Requests for ATAA consideration must:

1) be in writing;
2) include the TAA investigation number of the original petition; and
3) describe the group of workers included in the original petition, the name and location of the company where they worked and the article produced by their company.

Requests may be mailed to the United States Department of Labor, Employment and Training Administration, Division of Trade Adjustment Assistance, Room C-5311, 200 Constitution Avenue, N.W., Washington, DC 20210, Telephone: 202-693-3560, or may be submitted by Fax to: 202-693-3584 or 3585.

Upon receipt of the request, the Department will conduct an investigation into whether the ATAA group eligibility requirements under section 246(a)(3)(A)(ii) of the Act were met at the time the original TAA petition was filed. If group eligibility is established, the Department will issue a notice of determination of ATAA for the worker group. The impact date, certification date, and expiration date of the original certification will remain unchanged and will apply to the ATAA certification as well. Individual workers will then be eligible to apply for ATAA benefits through the state agency. The standards for individual eligibility under section 246(a)(3)(B) of the Act and TEGL No. 2-03 and 2-03, Change 1, will apply to each worker who applies for the ATAA program. None of the individual eligibility criteria or deadlines are affected by this change; individuals must still meet all five of the individual eligibility requirements, including the requirement to obtain reemployment by the last day of the 26th week after the worker's qualifying separation from TAA/ATAA-certified employment.

Worker groups covered by certifications that were issued prior to August 6, 2003, or that indicated at the time of the petition, either on the petition form or through subsequent contact with the Department, that they did not wish to be considered for ATAA certification are not eligible to submit a new request.

6. **Filing of Future Petitions.** The "Petition for Trade Adjustment Assistance" (OMB approval number 1205-0342) includes a question asking whether the petitioner(s) wish to request ATAA certification. Petitioners who wish to request ATAA certification must do so by answering "yes" to the question on the petition form at the time that it is filed. The Department will make one attempt to contact any petitioner who leaves that question blank. If the Department does not get a response from the petitioner(s) within 24 hours, the Department will assume the petitioner(s) did not wish to be considered for ATAA and the investigation will be conducted accordingly. Once a certification is issued, these worker groups will not be able to request ATAA certification. States are encouraged to work with petitioners to make sure they are aware of the ATAA program and the need to request ATAA certification on the petition form.

7. **Notification.** The Department will initiate contact with the original petitioner(s) and a company official for each of the worker groups that are covered by the certification of a petition that was in process on August 6, 2003, or that filed their petition after August 6, 2003, but used an obsolete form that did not provide an opportunity to indicate whether or not the petitioner(s) wished to request ATAA certification to inform them of their opportunity to request ATAA certification. Groups of workers who wish to request ATAA certification will have 45 days from the date of the Department's notification to submit their request for ATAA certification. States are encouraged to inform individual workers covered by the certifications that are affected by the amendments in this Change 2 of their

opportunity to request ATAA certification and to provide assistance in filing these requests, as needed.

8. **Action Required.** State administrators should distribute this advisory to appropriate staff. States must adhere to the requirements of federal law that are contained in this advisory.

9. **Inquiries.** States should direct all inquiries to the appropriate ETA Regional Office.

[FR Doc. 05–3420 Filed 2–22–05; 8:45 am]
BILLING CODE 4510–30–C

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:*

NUREG/BR–0238, Materials Annual Fee Billing Handbook; NRC Form 628, ''Financial EDI Authorization''; NUREG/BR–0254, Payment Methods; NRC Form 629, ''Authorization for Payment by Credit Card''.

3. *The form number if applicable:*

NRC Form 628, ''Financial EDI Authorization''; NRC Form 629, ''Authorization for Payment by Credit Card''.

4. *How often the collection is required:* Annually.

5. *Who will be required or asked to report:* Anyone doing business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.

6. *An estimate of the number of annual responses:* 7,330 (10 for NRC Form 628 and 7,320 for NRC Form 629 and NUREG/BR–0254).

7. *The estimated number of annual respondents:* 7,330 (10 for NRC Form 628 and 7,320 for NRC Form 629 and NUREG/BR–0254).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 611 (.8 hour for NRC Form 628 and 610 hours for NRC Form 629 and NUREG/BR–0254).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit cards. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 25, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John A. Asalone, Office of Information and Regulatory Affairs (3150–0190), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated in Rockville, Maryland, this 14th day of February, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–3399 Filed 2–22–05; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation; Concerning the Application for Irradiation of Mixed Oxide Lead Test Assemblies at Catawba Nuclear Station, Units 1 and 2, Supplement No. 1 to Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (NRC) is considering issuance of amendments to the Facility Operating Licenses to permit the use of mixed oxide (MOX) lead test assemblies (LTAs) in one of the two Catawba units and is considering the granting of exemptions from (1) the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.44(a), 10 CFR 50.46(a)(1) and 10 CFR part 50, Appendix K with respect to the use of M5™ fuel rod cladding; (2) 10 CFR 50.46(a)(1) and Appendix K to part 50 with respect to the use of MOX fuel; and (3) certain physical security requirements of 10 CFR parts 11 and 73 that are usually required at fuel fabrication facilities for the protection of strategic quantities of special nuclear material. A similar request for an exemption from the requirements of 10 CFR 50.44(a) with respect to the use of M5™ fuel rod cladding is not being granted since 10 CFR 50.44 has been changed and an exemption is no longer necessary. The amended licenses and exemptions would apply to Renewed Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Energy Corporation (Duke, the licensee), for operation of the Catawba Nuclear

Station (Catawba), Units 1 and 2, located in York County, South Carolina.

Pursuant to 10 CFR 51.21, the NRC issued an environmental assessment (EA) and finding of no significant impact (FONSI) on this matter by letter dated August 10, 2004, and also published it in the **Federal Register** on August 17, 2004 (69 FR 51112) (Reference 1). However, in letters dated August 31, September 20, October 29, and December 10, 2004, (References 2, 3, 5 and 6) the licensee stated that certain radiological dose consequence information provided in previous submittals was based on out-of-date input values for design basis accident doses with low enriched uranium (LEU) fuel and provided additional information describing the updated licensing basis dose consequences for the analyzed accidents. Since the EA that was published in the **Federal Register** on August 17, 2004, was based, in part, on the outdated information, the NRC staff is issuing this Supplement to the EA to address the updated information. The dose consequence analyses that were affected by this change are (a) the control room doses for the loss-of-coolant accident analysis (LOCA), the locked rotor analysis (LRA) and the rod ejection analysis (REA), (b) the exclusion area boundary (EAB) doses for the LRA and REA, and (c) the low-population zone (LPZ) doses for the LRA, the REA and the LOCA. Section 5.6, ''Design Basis Accident Consequences,'' is the section of the EA that is affected by this change. This Supplement provides an update of the affected portions of Section 5.6 that supercedes and replaces the comparable portions of Section 5.6 of the EA published on August 17, 2004, to address the information provided in the licensee's letters dated August 31, September 20, October 29, and December 10, 2004, and reaffirms the NRC's conclusions for the EA and the FONSI.

5.6 Design-Basis Accident Consequences (DBAs)

Duke has evaluated the radiological consequences of several categories of postulated DBAs involving MOX LTAs including the category of at-power accidents involving fuel damage to a significant portion of the entire core. These accidents range from the LRA that is calculated to damage 9.5 percent of the fuel assemblies (FAs) in the core (18 FAs) for Unit 1 and 5.0 percent (10 FAs) for Unit 2, the REA that is calculated to damage 50 percent of the core (97 FAs) for either unit, to the large break LOCA that is calculated to damage the full core (193 FAs). Accordingly, considering the proportion that four MOX LTAs represents of the number of fuel assemblies that are calculated to be damaged by each DBA, the calculated EAB thyroid dose increases that are attributable to the use of MOX are: for the LRA, 14.1 percent for Unit 1 and 25.4 percent for Unit 2; for the REA, 2.62 percent for each unit; and, for the LOCA, 1.32 percent.

The analysis of public doses for the EAB and LPZ resulting from this class of accidents considered by Duke is discussed below. In addition, the NRC staff has evaluated the radiological consequences of affected DBAs on personnel in the control room.

5.6.2 At-Power Accidents

The current licensing basis analyses assume that all FAs (193) are affected by a LOCA. For the LRA, 9.5 percent of the Unit 1 core is assumed to be affected and 5.0 percent of the Unit 2 core is assumed to be affected; for the REA, 50 percent of the core is assumed to be affected. For these events, Duke assumes that the four MOX LTAs are in the affected fuel population displacing four LEU assemblies. Because the dose is directly proportional to the fuel assembly inventory and gap fractions, the impact on the previously analyzed accident doses is based on quantifying the change in fission product release due to replacing up to four LEU fuel assemblies with the MOX LTAs. Although the consequences of these accidents could be determined by updating the current licensing basis analyses, Duke elected to perform a comparative evaluation, which the NRC staff has independently verified.

Duke selected the thyroid dose due to Iodine–131 (I–131) as the evaluation benchmark because the thyroid dose is typically more limiting than the whole body dose in that there is less margin between calculated thyroid doses and its associated dose criterion. Also, I–131 is generally the most significant contributor to thyroid dose due to its abundance and long decay half-life. Duke has determined that the I–131 inventory in a MOX LTA is 9 percent greater than that of an equivalent LEU fuel assembly.

Loss-of-Coolant Accident

For the LOCA, the four MOX LTAs represent 2.1 percent of the 193 assemblies in the core and the potential increase in the iodine release and the thyroid dose would be 1.32 percent. The resulting doses are 90.2 rem at the EAB and 12.9 rem at the LPZ. These doses are below the 300 rem dose reference value of 10 CFR 100.11, ''Determination of exclusion area, low population zone, and population center distance,'' and are not considered to be significant.

Locked-Rotor Accident

For the LRA in Unit 1, the four MOX LTAs represent 22 percent of the 18 affected assemblies in the core. The potential increase in the iodine release and the thyroid dose is 14.1 percent for Unit 1. The resulting doses are 26.9 rem at the EAB, and 4.6 rem at the LPZ. These doses are below the 300 rem dose reference value of 10 CFR 100.11, and are not considered to be significant.

For the LRA in Unit 2, the four MOX LTAs represent 40 percent of the 10 affected assemblies in the core. The potential increase in the iodine release and the thyroid dose is 25.4 percent for Unit 2. The resulting thryoid doses are 27.8 rem at the EAB, and 4.5 rem at the LPZ. These doses are below the 300 rem dose criterion of 10 CFR 100.11, and are not considered to be significant.

Rod-Ejection Accident

For the REA in Unit 1, the four MOX LTAs represent 4.1 percent of the 97 assemblies in the core assumed to be involved in the postulated accident and the potential increase in the iodine release and the resulting thyroid dose would be 2.62 percent. The resulting calculated thyroid doses are 22.3 rem at the EAB, and 17.8 rem at the LPZ. These doses are below the 300 rem dose criterion of 10 CFR 100.11, and are not considered to be significant.

For the REA in Unit 2, the four MOX LTAs represent 4.1 percent of the 97 assemblies in the core assumed to be involved in the postulated accident and the potential increase in the iodine release and the resulting thyroid dose would be 2.62 percent. Even though the percentage of iodine released from the fuel is the same for Units 1 and 2 (2.62 percent), the release of radioiodine to the environment is greater for Unit 2 due to differences in the design of the steam generators, thus resulting in a higher dose than calculated for Unit 1. The resulting calculated thyroid doses are 31.5 rem at the EAB, and 19.8 rem at the LPZ. These doses are below the 300 rem dose criterion of 10 CFR 100.11, and are not considered to be significant.

5.6.3 Control Room Dose

Control room dose is the only occupational dose that has been previously considered for DBA conditions. The at-power accident with the most severe consequences for the control room personnel is the LOCA; the control room doses from postulated locked-rotor or rod-ejection accidents are bounded by the calculated control

room dose from the LOCA. Duke determined that the resulting control room thyroid dose after a postulated LOCA considering the use of four MOX fuel LTAs would be 13 rem. This is below the NRC staff's 30 rem acceptance criterion and is not considered to be significant.

5.6.4 Conclusion

The DBA with the greatest consequences at the EAB (a LOCA) would result in a calculated offsite dose of 90.2 rem to the thyroid. The DBA with the greatest consequences at the LPZ (a REA) would result in calculated offsite doses of 17.8 and 19.8 rem to the thyroid for Units 1 and 2, respectively. These doses remain below the 300 rem reference value to the thyroid specified in 10 CFR 100.11 for offsite releases. The calculated change in dose consequences at the EAB and at the LPZ that could be attributable to the use of the four MOX fuel LTAs is not significant.

The DBA with the greatest consequences to the control room personnel, a LOCA, would result in a calculated dose of 13 rem to the thyroid. This dose remains below the 30 rem acceptance criterion. The calculated change in dose consequences for control room personnel that could be attributable to the use of the four MOX fuel LTAs is not significant.

The NRC staff concludes that the environmental impact resulting from incremental increases in EAB, LPZ, and control room dose following postulated DBAs that could occur as a result of the irradiation of four MOX LTAs does not represent a significant environmental impact.

11.0 Agencies and Persons Consulted

Related to the publication of the EA in August 2004, (Reference 1), on July 30, 2004, the NRC staff consulted with the South Carolina State official, Mr. Mike Gandy of the Department of Health and Environmental Controls, regarding the environmental impact of the proposed action. The State official had no comments. Related to the issuance of this Supplement to the EA, on February 8, 2005, the NRC staff consulted with the South Carolina State official, Mr. Mike Gandy, of the Department of Health and Environmental Controls, regarding the environmental impact of the proposed action. The State official had no comment.

12.0 References

1. NRC letter to Duke, Catawba Nuclear Station, Units 1 and 2—Environmental Assessment and Finding of No Significant Impact Related to the Use of Mixed Oxide Lead Test Assemblies (TAC Nos. MB7863, MMB7864, MC0824, MC0825), dated August 10, 2004 (ADAMS ML042230368). Also published in the **Federal Register** on August 17, 2004, 69 FR 51112.

2. Duke letter to NRC, Dose Inputs, August 31, 2004 (ADAMS ML042660144).

3. Duke letter to NRC, Revised Dose Evaluations, September 20, 2004 (ADAMS ML042890343).

4. NRC Letter to Duke, Requesting Additional Information, October 7, 2004 (ADAMS ML042860050).

5. Duke letter to NRC, Response to Request for Additional Information on Revised Dose Evaluations, October 29, 2004 (ADAMS ML043150030).

6. Duke letter to NRC, Additional Information on Revised Dose Evaluations, December 10, 2004 (ADAMS ML043560170).

13.0 Finding of No Significant Impact

On the basis of the EA and Supplement No. 1 to the EA, the NRC reaffirms its conclusion 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 February 27, 2003, and subsequent letters dated September 15, September 23, October 1 (two letters), October 3 (two letters), November 3 and 4, December 10, 2003, and February 2 (two letters), March 1 (three letters), March 9 (two letters), March 16 (two letters), March 26, March 31, April 13, April 16, May 13, June 17, August 31, September 20, October 4, October 29, and December 10, 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*.

Dated at Rockville, Maryland, this 14th day of February, 2005.

For the Nuclear Regulatory Commission.

Edwin M. Hackett,

Project Director, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–3397 Filed 2–22–05; 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; Exemption

1.0 Background

Dominion Nuclear Connecticut, Inc. (DNC or the licensee) is the holder of Facility Operating License No. DPR–65, which authorizes operation of the Millstone Power Station, Unit No. 2 (MP2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in New London County, Connecticut.

2.0 Request/Action

By letter dated November 5, 2004, as supplemented by letters dated January 6 and January 25, 2005, the licensee submitted a request for an exemption from the requirements of title 10 of the Code of Federal Regulations (10 CFR) section 50.68(b)(1) for loading, unloading, and handling of the components of the Transnuclear (TN) NUHOMS®-32PT dry cask storage system at MP2.

Section 50.68(b)(1) of 10 CFR 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.

The licensee is unable to satisfy the above requirement for handling the 10 CFR part 72 licensed contents of the TN NUHOMS®-32PT system. 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 in the application 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 to achieve the underlying purpose of 10 CFR 50.68(b)(1).

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Therefore, in determining the acceptability of the licensee's exemption request, the staff has performed the following regulatory, technical, and legal evaluations to satisfy the requirements of 10 CFR 50.12 for granting the exemption.

3.1 Regulatory Evaluation

The MP2 Technical Specifications (TSs) currently permit the licensee to store spent fuel assemblies in high-density storage racks in the MP2 spent fuel pool (SFP). In accordance with the provisions of 10 CFR 50.68(b)(4), the licensee takes credit for soluble boron for criticality control and ensures that the effective multiplication factor (k_{eff}) of the SFP does not exceed 0.95, if flooded with borated water. Section 50.68(b)(4) of 10 CFR also requires that, if credit is taken for soluble boron, the k_{eff} must remain below 1.0 (subcritical) if flooded with unborated water. However, the licensee is unable to satisfy the requirement to maintain the k_{eff} below 1.0 (subcritical) with unborated water, which is also the requirement of 10 CFR 50.68(b)(1), during cask handling operations in the SFP. Therefore, the licensee's request for exemption from 10 CFR 50.68(b)(1) proposes to permit the licensee to perform spent fuel loading, unloading, and handling operations related to dry cask storage, without being subcritical under the most adverse moderation conditions feasible by unborated water. It should be noted that an exemption from the requirements of 10 CFR 50.68(b)(4) is not necessary because it is only applicable to the spent fuel storage racks, which have been determined to be subcritical if flooded with unborated water.

Part 50, Appendix A of 10 CFR, ''General Design Criteria (GDC) for Nuclear Power Plants,'' provides a list of the minimum design requirements for nuclear power plants. According to GDC–62, ''Prevention of Criticality in Fuel Storage and Handling,'' the licensee must prevent criticality in the fuel handling and storage system by physical systems or processes.

Section 50.68 of 10 CFR part 50, ''Criticality Accident Requirements,'' provides the NRC requirements for maintaining subcritical conditions in SFPs. Section 50.68 of 10 CFR provides criticality control requirements which, if satisfied, ensure that an inadvertent criticality in the SFP is an extremely unlikely event. These requirements ensure that the licensee has appropriately conservative criticality margins during handling and storage of spent fuel. Section 50.68(b)(1) of 10 CFR states, ''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.'' Specifically, 10 CFR 50.68(b)(1) ensures that the licensee will maintain the pool in a subcritical condition during handling and storage operations without crediting the soluble boron in the SFP water.

The licensee has received a license to construct and operate an Independent Spent Fuel Storage Installation (ISFSI) at MP2. The ISFSI permits the licensee to store spent fuel assemblies in large concrete dry storage casks. As part of its ISFSI loading activities, the licensee transfers spent fuel assemblies to a dry shielded canister (DSC) in the cask pit area of the SFP. The licensee performed criticality analyses of the DSC fully loaded with fuel having the highest permissible reactivity, and determined that a soluble boron credit was necessary to ensure that the DSC would remain subcritical in the SFP. Since the licensee is unable to satisfy the requirement of 10 CFR 50.68(b)(1) to ensure subcritical conditions during handling and storage of spent fuel assemblies in the pool with unborated water, the licensee identified the need for an exemption from the 10 CFR 50.68(b)(1) requirement to support DSC loading, unloading, and handling operations, without being subcritical under the most adverse moderation conditions feasible by unborated water.

The staff evaluated the possibility of an inadvertent criticality of the spent nuclear fuel at MP2 during DSC loading, unloading, and handling. The staff has established a set of acceptance criteria that, if met, satisfy the underlying intent of 10 CFR 50.68(b)(1). In lieu of complying with 10 CFR 50.68(b)(1), the staff determined that an inadvertent criticality accident is unlikely to occur if the licensee meets the following five criteria:[1]

1. The cask criticality analyses are based on the following conservative assumptions:

a. All fuel assemblies in the cask are unirradiated and at the highest permissible enrichment,

b. Only 75 percent of the Boron-10 in the Boral panel inserts is credited,

c. No credit is taken for fuel-related burnable absorbers, and

d. The cask is assumed to be flooded with moderator at the temperature and density corresponding to optimum moderation.

2. The licensee's ISFSI TS requires the soluble boron concentration to be equal to or greater than the level assumed in the criticality analysis and surveillance requirements necessitate the periodic verification of the concentration both prior to and during loading and unloading operations.

3. Radiation monitors, as required by GDC–63, ''Monitoring Fuel and Waste Storage,'' are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

4. The quantity of other forms of special nuclear material, such as sources, detectors, etc., to be stored in the cask will not increase the effective multiplication factor above the limit calculated in the criticality analysis.

5. Sufficient time exists for plant personnel to identify and terminate a boron dilution event prior to achieving a critical boron concentration in the DSC. To demonstrate that it can safely identify and terminate a boron dilution event, the licensee must provide the following:

a. A plant-specific criticality analysis to identify the critical boron concentration in the cask based on the highest reactivity loading pattern.

b. A plant-specific boron dilution analysis to identify all potential dilution pathways, their flowrates, and the time necessary to reach a critical boron concentration.

c. A description of all alarms and indications available to promptly alert operators of a boron dilution event.

d. A description of plant controls that will be implemented to minimize the potential for a boron dilution event.

e. A summary of operator training and procedures that will be used to ensure

[1] The criteria have been used previously in the review of similar exemptions from the requirements of 10 CFR 50.68(b)(1) for Diablo Canyon Units No. 1 and 2 and Sequoyah Units No. 1 and 2. The evaluations for these exemptions are available in the Agencywide Documents Access and Management System under accession numbers ML040300693 and ML041540213, respectively.

that operators can quickly identify and terminate a boron dilution event.

3.2 Technical Evaluation

In determining the acceptability of the licensee's exemption request, the staff reviewed three aspects of the licensee's analyses: (1) Criticality analyses submitted to support the ISFSI license application and its exemption request, (2) boron dilution analysis, and (3) legal basis for approving the exemption. For each of the aspects, the staff evaluated whether the licensee's analyses and methodologies provide reasonable assurance that adequate safety margins are developed and can be maintained in the MP2 SFP during loading of spent fuel into canisters for dry cask storage.

3.2.1 Criticality Analyses

For evaluation of the acceptability of the licensee's exemption request, the staff reviewed the criticality analyses provided by the licensee in support of its ISFSI license application. Appendix M, Chapter 6, ''Criticality Evaluation,'' of the Standardized NUHOMS Final Safety Analysis Report (FSAR) contains detailed information regarding the methodology, assumptions, and controls used in the criticality analysis for the DSCs to be used at MP2. The staff reviewed the information contained in Chapter 6 as well as information provided by the licensee in its exemption request to determine if Criteria 1 through 4 of Section 3.1 were satisfied.

First, the staff reviewed the methodology and assumptions used by the licensee in its criticality analysis to determine if Criterion 1 was satisfied. The licensee provided a detailed list of the assumptions used in the criticality analysis in Appendix M, Chapter 6 of the NUHOMS FSAR as well as in its exemption request. The licensee stated that it took no credit in the criticality analyses for burnup or fuel-related burnable absorbers. The licensee also stated that all assemblies were analyzed at the highest permissible enrichment.

Additionally, the licensee stated that all criticality analyses for a flooded DSC were performed at temperatures and densities of water corresponding to optimum moderation conditions. In its supplemental response, dated January 25, 2005, the licensee provided the results of additional analyses it performed to determine the optimum moderation (*i.e.* maximum k^{eff}) conditions in the DSC. The licensee, using previously approved methodologies, determined the optimum moderation condition occurred at 75 percent of full-water density in the DSC. The licensee determined that this condition would only occur during a boiling condition in the cask that resulted in significant voiding. The maximum design basis temperature for the MP2 SFP is 150 degrees Fahrenheit. Therefore, the cooling system in the SFP is designed to preclude reaching the conditions calculated in the optimum moderation analysis. This provides additional conservative margin in the criticality analysis.

Finally, the licensee stated that it credited 90 percent of the Boron-10 content for the fixed neutron absorber in the DSC. NUREG–1536, ''Standard Review Plan for Dry Cask Storage System,'' states that ''[f]or a greater credit allowance [i.e. greater than 75 percent for fixed neutron absorbers] special, comprehensive fabrication tests capable of verifying the presence and uniformity of the neutron absorber are needed.'' In its review of the Standardized NUHOMS cask design, the staff reviewed and accepted the results of additional data supplied by the manufacturer which demonstrated that a 90-percent credit for the fixed neutron absorbers was acceptable in the TN NUHOMS®-32PT design. Therefore, for the purposes of this exemption, the staff finds a 90-percent credit acceptable on the basis that it has previously been reviewed and approved by the NRC. Subsequently, based on its review of the criticality analyses contained in Appendix M, Chapter 6 of the NUHOMS FSAR and the information submitted in its exemption request, the staff finds that the licensee has satisfied Criterion 1.

Second, the staff reviewed the proposed MP2 ISFSI TSs. The licensee's criticality analyses credit soluble boron for reactivity control during DSC loading, unloading, and handling operations. Since the boron concentration is a key safety component necessary for ensuring subcritical conditions in the pool, the licensee must have a conservative TS capable of ensuring that sufficient soluble boron is present to perform its safety function. The most limiting loading configuration of a DSC requires 2500 parts-per-million (ppm) of soluble boron to ensure the k^{eff} is maintained below 0.95, the regulatory limit relied upon by the staff for demonstrating compliance with the requirements of 10 CFR 72.124(a). MP2's ISFSI TSs require the soluble boron concentration in the DSC cavity to be greater than or equal to the concentrations assumed in the criticality analyses under a variety of DSC loading configurations. In all cases, the boron concentration required by the ISFSI TS ensures that the k^{eff} will be below 0.95 for the analyzed loading configuration. Additionally, the licensee's ISFSI TSs contain surveillance requirements which ensure it will verify that the boron concentration is above the required level both prior to and during DSC loading, unloading, and handling operations. Based on its review of the MP2 ISFSI TSs, the staff finds that the licensee has satisfied Criterion 2.

Third, the staff reviewed the MP2 Updated Final Safety Analysis Report (UFSAR) and the information provided by the licensee in its exemption request to ensure that it complies with GDC–63. GDC–63 requires that licensees have radiation monitors in fuel storage and associated handling areas to detect conditions that may result in a loss of residual heat removal capability and excessive radiation levels and initiate appropriate safety actions. As a condition of receiving and maintaining an operating license, the licensee must comply with GDC–63. The staff reviewed the MP2 UFSAR and exemption request to determine whether it had provided sufficient information to demonstrate continued compliance with GDC–63. Based on its review of both documents, the staff finds that the licensee complies with GDC–63 and has satisfied Criterion 3.

Finally, as part of the criticality analysis review, the staff evaluated the storage of non-fuel related material in a DSC. The staff evaluated the potential to increase the reactivity of a DSC by loading it with materials other than spent nuclear fuel and fuel debris. The approved contents for storage in the NUHOMS®-32PT cask design are listed in the Standardized NUHOMS Certificate of Compliance (CoC) 1004 Amendment 5 TSs. The contents have been reviewed for storage in the DSCs to be used at MP2 to ensure that subcritical conditions can be maintained. As such, MP2 is restricted to the storage of only those approved contents listed in the TSs. Additionally, the TSs restrict the loading patterns for storage of the approved contents. All of these controls ensure that the DSCs will remain subcritical under the most adverse conditions. Therefore, the staff determined that the loading limitations described in the CoC will ensure that any authorized components loaded in the DSCs will not result in a reactivity increase. Based on its review of the loading restrictions, the staff finds that the licensee has satisfied Criterion 4.

3.2.2 Boron Dilution Analysis

Since the licensee's ISFSI application relies on soluble boron to maintain subcritical conditions within the DSCs

during loading, unloading and handling operations, the staff reviewed the licensee's boron dilution analysis to determine whether appropriate controls, alarms, and procedures were available to identify and terminate a boron dilution accident prior to reaching a critical boron concentration.

By letter dated October 25, 1996, the staff issued a safety evaluation (SE) of licensing topical report WCAP–14416, ''Westinghouse Spent Fuel Rack Criticality Analysis Methodology.'' This SE specified that the following issues be evaluated for applications involving soluble boron credit: the events that could cause boron dilution, the time available to detect and mitigate each dilution event, the potential for incomplete boron mixing, and the adequacy of the boron concentration surveillance interval.

The TS requirements for the NUHOMS®-32PT Cask System include a minimum boron concentration requirement of 2500 ppm boron when spent fuel assemblies with enrichments less than or equal to 3.8 weight-percent (wt-percent) U–235 are loaded into an DSC canister. For higher enrichments, a combination of poison rod assemblies (PRAs) and SFP soluble boron concentration are used to ensure subcritical conditions are maintained in the DSC. The quantity of PRAs needed is a function of the initial, unirradiated enrichment of the fuel assemblies to be loaded in the DSC. For the purposes of this exemption review, the limiting critical boron concentration was determined for the 3.8 wt-percent enrichment loading with no PRAs. Therefore, the approval of this exemption is limited to the DSC loading, unloading, and handling of combustion engineering 14 x 14 fuel assemblies enriched to a maximum of 3.8 wt-percent U–235 and no PRAs. The NUHOMS soluble boron TS requirements ensure that k^{eff} is maintained less than 0.95. TS surveillance requirements require the boron concentration in the DSC water to be verified by two independent measurements within 4 hours prior to commencing any loading or unloading of fuel and verified every 48 hours thereafter while the DSC is in the SFP when one or more fuel assemblies are installed.

The licensee contracted with TN to perform a criticality analysis to determine the soluble boron concentration that results in a k^{eff} equal to 1.0 for 3.8 wt-percent U–235 fuel enrichments using the same methodology as approved in the Standardized NUHOMS Cask System Final Safety Analysis. The analysis determined the critical boron concentration level for 3.9 wt-percent U–235 enriched fuel was 1700 ppm. The licensee selected 3.9 wt-percent U–235 enriched fuel as opposed to the 3.8 wt-percent limit in the TSs for added conservatism. The boron concentration within the canister would have to decrease from the TS limit to the critical boron concentration before criticality is possible. The licensee based its boron dilution analyses and its preventive and mitigative actions on dilution sources with the potential to reduce the boron concentration from the TS minimum value to the critical concentration.

During the current analysis, the licensee referenced a previous analysis of the boron dilution event performed for MP2 and submitted to the NRC via letter on November 5, 2001. In this analysis the licensee identified all credible potential sources that could dilute the SFP to critical conditions. The licensee determined that the limiting boron dilution event occurs when primary make-up water (PMW), with a maximum flow rate of 200 gpm (gallons per minute), is added to the SFP. The licensee identified the following additional credible bounding dilution sources and their flow rates: 100 gpm from the auxiliary feedwater makeup to the SFP through an open valve directly to the SFP; 142 gpm from the reactor building closed component cooling water leaking to the SFP through a heat exchanger tube rupture; 93 gpm from a piping leak in the fire protection system, domestic water or the turbine building closed cooling water system. The staff found the scope and results of the dilution source evaluation acceptable.

The licensee's calculations show that at least 5 hours will be available before the DSC water boron concentration decreases from 2500 ppm to the critical concentration of 1700 ppm when a slug flow (no mixing) model is assumed.

To demonstrate that sufficient time exists for plant personnel to identify and terminate a boron dilution event, the licensee provided a description of all alarms available to alert operators, and plant controls that will be implemented. There is no automatic level control system for the SFP; therefore, the SFP will overflow on an uncontrolled water addition. However, a high-level alarm in the control room would alert personnel of a potential boron dilution event within an hour for a 200 gpm dilution rate. Since it would take an additional hour before the pool begin to overflow, at least 3 hours would be available for mitigation of the dilution. The staff finds that this is sufficient time to terminate the event before 1700 ppm in the DSC is reached.

The configuration of the cask laydown pit in the pool could allow localized boron dilution and stratification because the pit is open to the SFP only through a narrow transfer path above the level of stored fuel. Addition of cold water directly to the cask loading area that is denser than the warm, borated pool water could fill the bottom of the cask pit with water having a low boron concentration. To avoid direct dilution to the cask pit area, the licensee has committed to include several requirements to its ISFSI operational procedures whenever a DSC is in the SFP with fuel inside. The procedures will require (1) verification that the opening of the cask pit is free from obstructions so that adequate flow between the SFP and the cask pit is established, (2) verification that the return isolation valve to the cask laydown pit is open, which will ensure adequate mixing and cooling within the cask pit area, thereby minimizing the possibility that boron stratification occurs, (3) continuous personnel presence on the SFP floor to promptly identify any inadvertent dilution that could cause stratification in the cask pit, and (4) maintaining 850 gpm of SFP cooling flow to establish adequate mixing throughout the pool.

To ensure that operators are capable of identifying and terminating a boron dilution event during DSC loading, unloading, and handling operations, operator training will be conducted. The training will emphasize the importance of avoiding any inadvertent additions of unborated water to the SFP, responses to be taken for notifications or alarms that may be indicative of a potential boron dilution event during DSC loading and fuel movement, and identification of the potential for a boron dilution during decontamination activities.

Based on the staff's review of the licensee's exemption request dated November 5, 2004, the supplemental information provided by letters dated January 6, and January 25, 2005, and its boron dilution analysis, the staff finds the licensee has provided sufficient information to demonstrate that an undetected and uncorrected dilution from the TS required boron concentration to the calculated critical boron concentration is not credible. Based on its review of the boron analysis and enhancements to the operating procedures and operator training program, the staff finds the licensee has satisfied Criterion 5.

Therefore, in conjunction with the conservative assumptions used to

establish the TS required boron concentration and critical boron concentration, the boron dilution evaluation demonstrates that the underlying intent of 10 CFR 50.68(b)(1) is satisfied.

3.3 Legal Basis for the Exemption

Pursuant to 10 CFR 50.12, ''Specific Exemption,'' the staff reviewed the licensee's exemption request to determine if the legal basis for granting an exemption had been satisfied, and concluded that the licensee has satisfied the requirements of 10 CFR 50.12. With regard to the six special circumstances listed in 10 CFR 50.12(a)(2), the staff finds that the licensee's exemption request satisfies 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' Specifically, the staff concludes that since the licensee has satisfied the five criteria in Section 3.1 of this exemption, the application of the rule is not necessary to achieve its underlying purpose in this case.

3.4 Summary

The following limitations and/or conditions are applicable to this exemption:

A. Loading, unloading, and handling of the DSC for the TN NUHOMS®–32PT shall only be done at MP2.

B. Loading, unloading, and handling in the DSC at MP2 is limited to Combustion Engineering 14 x 14 fuel assemblies that had a maximum initial, unirradiated U–235 enrichment of 3.8 wt-percent.

C. The licensee will implement the actions as stated in Attachment 2 of its supplement dated January 25, 2005, namely:

1. DNC will revise ISFSI procedures or calculations to state that poison rod assembly (PRA) use is not authorized by the proposed 10 CFR 50.68(b)(1) exemption.

2. DNC will revise ISFSI procedures to require that when a fueled 32PT DSC is in the MPS2 [Millstone Power Station, Unit No. 2] SPF[,] Spent Fuel Pool Cooling Flow must be at least 850 gpm.

3. During the time that a fueled DSC is in the SFP procedural controls will be implemented to ensure that the transfer canal bulkhead gate will not be used to block the transfer canal opening to the SFP.

4. An additional precaution will be added to the SFP high level alarm response procedure to identify that if there is a fueled DSC in the SFP additional boron concentration limits apply. These limits will be specified in the procedure.

5. Training will be conducted to ensure operators are aware of the 32PT DSC TS SFP boron concentration requirements, and should a boron dilution occur, at what boron concentration criticality in the DSC could occur. The training will emphasize the importance of avoiding any inadvertent additions of unborated water to the SFP, responses to be taken for notification or alarms that may be indicative of a potential boron dilution event during cask loading and fuel movement in the SFP, and identification of the potential for a boron dilution event during decontamination rinsing activities.

6. Appropriate controls or measures to minimize the possibility of direct dilution of the cask handling area of the SFP will be established prior to DSC loading.

(a) DNC will revise ISFSI procedures to require an individual remain on the SFP floor at all times when a fueled 32PT DSC is in the MPS2 SFP to ensure that the SFP is not overflowing and that water is not unintentionally spilling into the SFP.

(b) DNC will revise ISFSI procedures to require Valve 2–RW–350 [to] remain open when a fueled 32PT DSC is in the MPS2 SFP.

(c) DSC procedures will be modified to include a requirement that the SFP will be sampled for boron concentration after each intentional addition of a maximum of 500 gallons of unborated water.

7. DNC will revise ISFSI procedures to require [that] Valve 2–RW–2 will be closed when a fueled 32PT DSC is in the MP2 SFP.

The staff finds, based upon the review of the licensee's proposal to credit soluble boron during DSC loading, unloading, and handling in the MP2 SFP, that pursuant to 10 CFR 50.12(a)(2), the licensee's exemption request is acceptable.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Dominion Nuclear Connecticut, Inc. an exemption from the requirements of 10 CFR 50.68(b)(1) for the loading, unloading, and handling of the components of the TN NUHOMS®–32PT dry cask storage system at MP2. Any changes to the cask system design features affecting criticality or its supporting criticality analyses will invalidate this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (69 FR 2012).

This exemption is effective upon issuance.

Dated in Rockville, Maryland, this 15th 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. 05–3398 Filed 2–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03829]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the P&G-Clairol Facility in Stamford, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Kathy Dolce Modes, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5251, fax (610) 337–5269; or by e-mail: *kad@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to P&G-Clairol, Inc., (P&G-Clairol) for Materials License No. 06–11703–02, to authorize release of its facility in Stamford, Connecticut for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the action is to authorize the release of the licensee's

Stamford, Connecticut facility for unrestricted use. P&G-Clairol was authorized by NRC from June 10, 1971, to use radioactive materials for research and development purposes at the site. On July 6, 2004, P&G-Clairol requested that NRC release the facility for unrestricted use. P&G-Clairol has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by P&G-Clairol. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated P&G-Clairol's request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: The Environmental Assessment (ML050420203), Application dated July 6, 2004, requesting termination of the license (ML042030040), letter dated October 7, 2004, with attachments providing additional information (ML042920466), electronic mail dated October 8 and 10, 2004 (ML 043000248), electronic mail dated December 14, 2004 (ML043570057), and Addendum to the Report on the Final Radiological Status Survey dated November 22, 2004 (received on December 15, 2004) (ML043570467). Please note that on October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's Web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public documents Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*. The PDR reproduction contractor will copy documents for a fee. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated at King of Prussia, Pennsylvania this 15th day of February, 2005.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 05–3401 Filed 2–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03001317]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Department of the Army, Walter Reed Army Medical Center Washington, DC

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Laurie Kauffman, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5323, fax (610) 337–5269; or by e-mail: *lap@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Department of the Army, Walter Reed Army Medical Center (WRAMC) for Materials License No. 08–01738–02, to authorize release of Building T–2 of the Washington, DC site for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the action is to authorize the release of the licensee's Building T–2 of the Washington, DC facility for unrestricted use. WRAMC was authorized by the U.S. Atomic Energy Commission (AEC) on February 18, 1959 to use radioactive materials for medical research, diagnosis, and therapy purposes at the site. On October 29, 2004, WRAMC requested that the NRC release the facility for unrestricted use. WRAMC has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in 10 CFR part 20, subpart E, for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed in support of the license amendment. The NRC staff has reviewed the information and final status survey submitted by WRAMC. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in 10 CFR part 20, subpart E, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to release Building T–2 in its entirety of the WRAMC

facility at 6900 Georgia Avenue, NW., Washington, DC for unrestricted use. The NRC staff has evaluated WRAMC's request and the results of the surveys and has concluded that the completed action complies with the criteria in 10 CFR part 20, subpart E. The staff has found that the environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment (ADAMS Accession No. ML050460068); Amendment Request for WRAMC Building T–2 (ADAMS Accession No. ML043220447); Historical Site Assessment for WRAMC Building T–2 (ADAMS Accession No. ML043220460); and Final Status Survey for WRAMC Building T–2 (ADAMS Accession No. ML043220467). 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 (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Please note that on October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's Web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Dated in King of Prussia, Pennsylvania this 15th day of February, 2005.

For the Nuclear Regulatory Commission.

Ronald R. Bellamy,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 05–3402 Filed 2–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on March 3–5, 2005, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 24, 2004 (69 FR 68412).

Thursday, March 3, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Revised Draft NUREG on Expert Elicitation on Large-Break LOCA Frequencies (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the revised draft NUREG-xxx, ''Estimating Loss-of-Coolant Accident (LOCA) Frequencies Through the Elicitation Process,'' and related matters.

10:15 a.m.–12:15 p.m.: Proposed Rulemaking Package for Risk-Informing 10 CFR 50.46 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed rulemaking package for risk-informing 10 CFR 50.46, ''Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors.''

1:15 p.m.–2:45 p.m.: Draft Safety Evaluation Report Related to North Anna Early Site Permit Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Dominion Nuclear North Anna, LLC regarding the NRC staff's draft Safety Evaluation Report related to the North Anna Early Site Permit Application.

3 p.m.–5 p.m.: Technical Basis for Potential Revision of the Pressurized Thermal Shock (PTS) Screening Criteria in the PTS Rule (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the technical basis for potential revision of the PTS screening criteria in the PTS rule.

5:15 p.m.–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, March 4, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.—8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Proposed Revisions to Generic License Renewal Guidance Documents/Scoping Review Process for BOP Systems (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to: NUREG–1800, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants;'' NUREG–1801, ''Generic Aging Lessons Learned (GALL) Report;'' and Draft Regulatory Guide DG–1140, ''Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses'' (Proposed Revision 1 to Regulatory Guide 1.188) that endorses, with certain exceptions, NEI 95–10, Rev. 5, ''Industry Guidelines for Implementing the Requirements of 10 CFR 54—The License Renewal Rule.'' The Committee will also discuss with the staff the scoping review process for balance-of-plant (BOP) systems.

10:45 a.m.–12:15 p.m.: Preparation for Meeting With the NRC Commissioners (Open)—The Committee will discuss topics for meeting with the NRC Commissioners which is scheduled for April 7, 2005.

1:15 p.m.–2:15 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

2:15 p.m.–2:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The

Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

2:45 p.m.–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, March 5, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 2004 (69 FR 59620). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., e.t.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: February 16, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 05–3396 Filed 2–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a new guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Regulatory Guide 1.202, ''Standard Format and Content of Decommissioning Cost Estimates for Nuclear Power Reactors,'' provides guidance for licensees to use in meeting the NRC's regulatory requirements for the various cost estimates that the agency requires for different stages and methods of decommissioning. Specifically, on July 29, 1996, the NRC amended its regulations on decommissioning procedures that lead to termination of an operating license for nuclear power reactors, as specified in Title 10, Section 50.82, of the *Code of Federal Regulations* (10 CFR 50.82). That rulemaking included changes to the decommissioning-related provisions of 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders''; part 50, ''Domestic Licensing of Production and Utilization Facilities''; and part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Regulatory Guide 1.202 describes a method that the NRC staff considers acceptable for complying with those amended regulations.

In November 2001, the NRC staff published a draft of this guide as Draft Regulatory Guide DG–1085. Following the closure of the public comment period on January 30, 2002, the staff resolved all stakeholder comments in the course of preparing the new Regulatory Guide 1.202.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Regulatory Guide 1.202 may be directed to C.L. Pittiglio at (301) 415–1435 or via e-mail to *CLP@nrc.gov*.

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections*. Electronic copies of Regulatory Guide 1.202 are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession No. ML050230008. Note, however, that the NRC has temporarily suspended public access to ADAMS so that the agency can complete security reviews of publicly

available documents and remove potentially sensitive information. Please check the NRC's Web site for updates concerning the resumption of public access to ADAMS.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated in Rockville, Maryland, this 14th day of February, 2005.

For the U.S. Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 05–3400 Filed 2–22–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

21st Century Technologies, Inc.; Order of Suspension of Trading

February 18, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 21st Century Technologies, Inc., (''21st Century'') because of questions that have been raised about the accuracy of publicly disseminated information concerning, among other things, the valuations assigned to certain purported assets of 21st Century in the company's most recent Quarterly Report on Form 10–Q and in other filings with the Commission.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. e.s.t., February 18, 2005, through 11:59 p.m. e.s.t., on March 4, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–3507 Filed 2–18–05; 12:03 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51209; File No. SR–Amex–2005–007]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Require Members To Use and Maintain a Back-up Automatic Quote System in ANTE Classes

February 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II and III below, which items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to require members to use and maintain a back-up quoting system in ANTE classes and to incorporate violations of this requirement in the Exchange's Minor Rule Violation Plan (''Plan''). The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Amex Rule 950–ANTE(l), Commentary .02(a) to require a Specialist utilizing an Exchange-approved proprietary automatic quote system in a class trading on Amex's ANTE system to have available for immediate use the Exchange-provided automatic quote system that is independent of the Specialist's primary automatic quote system. Specialists would be required to take appropriate provisions to immediately fall back onto the Exchange-provided automatic quotation system should their Exchange-approved proprietary automatic quote system fail. Included within ''appropriate provisions'' would be the requirement that Specialists be diligent in keeping their theoretical values current in their back-up system. This requirement would apply at all times during market hours. The Amex believes that the back-up system would need to be independent in order to ensure that any event that could cause a failure to the primary automatic quote system would not corrupt the back-up system.

The Exchange believes that the failure of a proprietary automatic quote system could result in the Amex's inability to open an entire group of listed options classes for a brief or sometimes lengthy time period. Thus, the Amex seeks to require that Specialists have the Exchange-provided automatic quotation system ready, as a back-up, should their primary automatic quote system fail. The Exchange believes that failure to comply with the proposed requirement should be subject to sanction under the Plan.

The Exchange has had the Plan since 1976, which provides a simplified procedure for the resolution of minor rule violations. Codified in Amex Rule 590, the Plan has three distinct sections: Part 1 (''General Rule Violations'') which covers more substantive matters that, nonetheless, are deemed ''minor'' by the Commission and the Amex; Part 2 (''Floor Decorum'') which covers Floor Decorum and operational matters; and Part 3 (''Reporting Violations'') which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

covers the late submission of routine reports.

Accordingly, the Amex proposes to amend Part 1(g) of Amex Rule 590 to allow for the issuance of minor fines when a Specialist fails to comply with the Exchange's procedures regarding maintaining and utilizing the Exchange-provided automatic quote system as a back-up to the Specialist's Exchange-approved proprietary automatic quote system.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of section 6(b)(5) of the Act,[4] in particular, in that it is designed 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2005–007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–007 and should be submitted on or before March 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–695 Filed 2–22–05; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51208; File No. SR–Amex–2005–019]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Amending Amex Rule 26

February 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 8, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by the Amex. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks to amend Amex Rule 26 to remove references to the ''Minor Floor Violation Disciplinary Committee.'' The text of the proposed rule change is available on Amex's Web site *http://www.amex.com*, at the Amex's Office of the Secretary, and the Commission's Public Reference Room.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Amex asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2003 the Exchange submitted a proposal to eliminate the Minor Floor Violation Disciplinary Committee (the ''Committee'') and remove all references to the Committee from Amex rules. Specifically, an amendment was approved to remove references from the Commentary to Amex Rule 26.[6] Unfortunately, there are remaining references to the Committee contained within the body of Amex Rule 26 that were inadvertently overlooked. This filing merely seeks to remove the additional references to the Committee in order to keep published rules accurate.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(1)[8] in particular in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[12] The Commission notes that accelerating the operative date will allow for the expeditious and accurate publication of Amex rules. For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2005–019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–019 and should be submitted on or before March 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–696 Filed 2–22–05; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Securities Exchange Act Release No. 48557 (September 29, 2003), 68 FR 57494 (October 3, 2003) (order approving File No. SR–Amex–2003–71).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) also requires that the exchange give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change. The Exchange satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51213; File No. SR–NASD–2004–180]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Waiver of California Arbitrator Disclosure Standards

February 16, 2005.

I. Introduction

On December 9, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''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 relating to the waiver of California Arbitrator Disclosure Standards. The proposed rule change was published for comment in the **Federal Register** on January 14, 2005.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Description of the Proposal

Effective July 1, 2002, the California Judicial Council adopted a set of rules, ''Ethics Standards for Neutral Arbitrators in Contractual Arbitration'' (''California Standards''),[4] which contain extensive disclosure requirements for arbitrators. According to NASD, the rules were designed to address conflicts of interest in private arbitration forums that are not part of a federal regulatory system overseen on a uniform, national basis by the SEC. NASD states that the California Standards impose disclosure requirements on arbitrators that conflict with the disclosure rules of NASD and the New York Stock Exchange (''NYSE''). Because NASD could not both administer its arbitration program in accordance with its own rules and comply with the new California Standards at the same time, NASD initially suspended the appointment of arbitrators in cases in California, but offered parties several options for pursuing their cases.[5] In response to the adoption of the California Standards and the conflict between the California Standards and the NASD Rules, NASD, the NYSE, and other claimants filed various actions in both the federal court system and the California state court system. These cases are presently proceeding through both the California and the federal court systems.[6]

To allow arbitrations to proceed in California while the litigation regarding the applicability of the California Standards to SRO arbitrations is pending, NASD implemented a pilot rule to require all industry parties (member firms and associated persons) to waive application of the California Standards to the case, if all the parties in the case who are customers, associated persons with claims against industry parties, member firms with claims against other member firms, or member firms with claims against associated persons that relate exclusively to promissory notes, have done so.[7]

The pilot rule, which was originally approved for six months on September 26, 2002,[8] has been extended and is now due to expire on March 31, 2005.[9] NASD believes all the pending litigation regarding the California Standards is unlikely to be resolved by March 31, 2005. The Commission is approving NASD's request to extend the effectiveness of the pilot rule through September 30, 2005, in order to permit NASD to avoid disrupting the administration of cases covered by the pilot rule under the NASD Code of Arbitration Procedure.

B. Comment Summary

The proposal was published for comment in the **Federal Register** on January 14, 2005.[10] We received no comments on the proposal.

III. Discussion and Findings

The Commission finds the proposed rule change is consistent with the Act, and in particular with section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[11] The Commission believes that the proposed rule change is consistent with the provisions of the Act noted above because, in the event that the pending litigation regarding the California Standards is not resolved by March 31, 2005, the current pilot expiration date, the extension of the effectiveness of the pilot rule through September 30, 2005, will permit NASD to avoid disrupting the administration of cases covered by the pilot rule under the NASD Code of Arbitration Procedure. The Commission believes that NASD's current system provides an appropriate forum for the resolutions of cases covered by the pilot rule. Under the pilot rule, the arbitration proceeds under the NASD Code of Arbitration Procedure, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest.[12] The Commission believes that the extension of the pilot rule will provide claimants with a continuing, consistent, and appropriate forum in which to arbitrate their claims, allowing claimants to proceed rather than requiring them to suspend their claims until the litigation is completed. The Commission believes that providing claimants with such a forum is consistent with the protection of investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[13] that the proposed rule change (SR–NASD–2004–

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 50971 (January 6, 2005), 70 FR 2685 (January 14, 2005) (the ''Notice'').

[4] California Rules of Court, Division VI of the Appendix.

[5] These measures included providing venue changes for arbitration cases, using non-California arbitrators when appropriate, and waiving administrative fees for NASD-sponsored mediations.

[6] For a more complete discussion of the various pending cases, please see the Notice, *supra* note 3.

[7] Originally, the pilot rule applied only to claims by customers, or by associated persons asserting a statutory employment discrimination claim against a member, and required a written waiver by the industry respondents. In July 2003, NASD expanded the scope of the pilot rule to include all claims by associated persons against another associated person or a member. At the same time, the rule was amended to provide that when a customer, or an associated person with a claim against a member or another associated person, agrees to waive the application of the California Standards, all respondents that are members or associated persons will be deemed to have waived the application of the standards as well. The July 2003 amendment also clarified that the pilot rule applies to terminated members and associated persons. *See* Securities Exchange Act Release No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (SR–NASD–2003–106). In October 2003, NASD again expanded the scope of the pilot rule to include claims filed by members against other members and to claims filed by members against associated persons that relate exclusively to promissory notes. *See* Securities Exchange Act Release No. 48711 (October 29, 2003), 68 FR 62490 (November 4, 2003) (SR–NASD–2003–153).

[8] *See* Securities Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (SR–NASD–2002–126).

[9] *See* Securities Exchange Act Release No. 50447 (September 24, 2004), 69 FR 58567 (September 30, 2004) (SR–NASD–2004–126).

[10] *See* note 3, supra.

[11] 15 U.S.C. 78o–3(b)(6).

[12] NASD notes that the NYSE has a similar rule, NYSE Rule 600(g).

[13] 15 U.S.C. 78s(b)(2).

180) be, and hereby is, approved through September 30, 2005.[14]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–734 Filed 2–22–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51214; File No. SR–NASD–2005–014]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 11 Examination Program

February 16, 2005

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II and III below, which items have been prepared by NASD. NASD filed this proposal pursuant to section 19(b)(3)(A)(i)[3] of the Act and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing revisions to the study outline and selection specifications for the Assistant Representative—Order Processing (Series 11) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the examination. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

The revised study outline is available at NASD and at the Commission. However, NASD has omitted the Series 11 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b-2 under the Act.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to section 15A(g)(3) of the Act,[7] which requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The Series 11 examination qualifies an individual to function as an assistant representative to accept unsolicited securities orders from existing customers of a member firm. A Series 11 assistant representative may not solicit transactions or new accounts on behalf of the member, render investment advice, make recommendations to customers regarding the appropriateness of securities transactions, or effect transactions in securities markets on behalf of the member. Further, a Series 11 assistant representative may not be registered concurrently in any other capacity.A committee of industry representatives, together with NASD staff, recently undertook a review of the Series 11 examination program. As a result of this review, NASD is proposing revisions to the examination program to reflect changes to the laws, rules, and regulations covered by the examination, to include new securities products, such as exchange-traded funds, and to focus the examination more on the handling of customer accounts and orders. Based on these revisions, the title of Section 2 was changed from ''Processing Customer Orders; Providing Price Information; and Order Processing'' to ''Customer Accounts and Orders.'' NASD is further proposing revisions to the study outline to reflect the new SEC short sale requirements.[8] In addition, the number of questions on each section of the study outline were modified as follows: Types of Securities, decreased from 11 to 10 questions; Customer Accounts and Orders, increased from 19 to 24 questions; Securities Markets, decreased from 8 to 5 questions; and Securities Industry Regulations, decreased from 12 to 11 questions.

NASD is proposing similar changes to the corresponding sections of the Series 11 selection specifications and question bank. The number of questions on the Series 11 examination will remain at 50, and candidates will have one hour to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

2. Statutory Basis

NASD believes that the proposed revisions to the Series 11 examination program are consistent with the provisions of sections 15A(b)(6)[9] and 15A(g)(3) of the Act,[10] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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[14] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] U.S.C 78s(b)(1).

[2] CFR 240.19b–4.

[3] U.S.C 78s(b)(3)(A)(i).

[4] CFR 240.19b–4.

[5] NASD also is proposing corresponding revisions to the Series 11 question bank, but based upon instruction from the Commission staff, NASD is filing SR–NASD–2005–014 for immediate effectiveness, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for Commission review.

[6] CFR 240.24b–2.

[7] U.S.C 78*o*–3(g)(3).

[8] Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004)(S7–23–2003).

[9] U.S.C. 78*o*–3(b)(6).

[10] U.S.C. 78*o*–3(g)(3).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[11] and Rule 19b–4(f)(1) thereunder,[12] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the Series 11 examination program no later than April 29, 2005. NASD will announce the implementation date in a *Notice to Members* to be published no later than 60 days after SEC Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–014 and should be submitted on or before March 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–736 Filed 2–22–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51215; File No. SR–NASD–2005–015]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 55 Examination Program

February 16, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II and III below, which items have been prepared by NASD. NASD filed this proposal pursuant to section 19(b)(3)(A)(i)[3] of the Act and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing revisions to the study outline and selection specifications for the Limited Representative—Equity Trader (Series 55) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the examination. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

The revised study outline is available at NASD and at the Commission. However, NASD has omitted the Series 55 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to section 15A(g)(3) of the Act,[7] which requires NASD to prescribe

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] NASD also is proposing corresponding revisions to the Series 55 question bank, but based upon instruction from the Commission staff, NASD is filing SR–NASD–2005–015 for immediate effectiveness, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for Commission review.

[6] 17 CFR 240.24b–2.

[7] 15 U.S.C. 78*o*–3(g)(3).

standards of training, experience, and competence for persons associated with NASD members, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The Series 55 examination is required, with certain limited exceptions, for registered representatives who are engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, with respect to transactions in equity, preferred or convertible debt securities effected otherwise than on a securities exchange. There is an exception from the requirement for the Series 55 examination for any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 [8] and that controls, is controlled by, or is under common control with the member.

A committee of industry representatives, together with NASD staff, recently undertook a review of the Series 55 examination program. As a result of this review, NASD is proposing revisions to the section on The Nasdaq Stock Market, Inc. (''NASDAQ'') Automated Execution and Trading Systems in the study outline to better reflect the importance of the NASDAQ Market Center—Execution Service (SuperMontage). NASD also is proposing revisions to the study outline to remove certain portions (such as SEC Rules 11Ac1–7 [9] and 17a–4,[10] Overallotments (Greenshoe), Tender Offers, and NASD Rule 11810 (Buying-In)) that relate more to a firm's sales practice or operations department than to the firms' NASDAQ trading desk. As a result of the revisions, the title of Section 2 was changed from ''NASDAQ Automated Execution and Trading Systems'' to ''NASDAQ Display, Execution and Trading Systems.'' NASD is further proposing revisions to the study outline to reflect the new SEC short sale requirements.[11] In addition, the number of questions on each section of the study outline was modified as follows: NASDAQ and Over-The-Counter Markets, decreased from 45 to 42 questions; NASDAQ Display, Execution and Trading Systems, increased from 9 to 15 questions; Trade Reporting Requirements, decreased from 18 to 16 questions; and General Industry Standards, decreased from 28 to 27 questions.

NASD is proposing similar changes to the corresponding sections of the Series 55 selection specifications and question bank. The number of questions on the Series 55 examination will remain at 100, and candidates will have three hours to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade

2. Statutory Basis.

NASD believes that the proposed revisions to the Series 55 examination program are consistent with the provisions of sections 15A(b)(6) [12] and 15A(g)(3) of the Act,[13] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act [14] and Rule 19b–4(f)(1) thereunder,[15] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the Series 55 examination program no later than April 29, 2005. NASD will announce the implementation date in a *Notice to Members* to be published no later than 60 days after SEC Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR–NASD–2005–015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[8] 15 U.S.C. 80a–1 *et seq.*

[9] 17 CFR 240.11Ac1–7.

[10] 17 CFR 240.17a–4.

[11] Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (S7–23–2003).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78*o*–3(g)(3).

[14] 15 U.S.C. 78s(b)(3)(A)(i).

[15] 17 CFR 240.19b–4(f)(1).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–015 and should be submitted on or before March 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–737 Filed 2–22–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51216; File No. SR–NASD–2005–025]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 4 Examination Program

February 16, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II and III below, which items have been prepared by NASD. NASD filed this proposal pursuant to section 19(b)(3)(A)(i)[3] of the Act and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing revisions to the study outline and selection specifications for the Limited Principle—Registered Options (Series 4) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the examination. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

The revised study outline is available at NASD and at the Commission. However, NASD has omitted the Series 4 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to section 15A(g)(3) of the Act,[7] which requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations (''SROs''), that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

NASD Rule 1022(f) states that member firms engaged in, or intending to engage in, transactions in security futures or put or call options with the public must have at least one Registered Options and Security Futures Principal. In addition, every individual engaged in the management of the day-to-day options or security futures activities of a firm must be registered as a Registered Options and Security Futures Principal. The Series 4 examination, an industry-wide examination, qualifies an individual to function as a Registered Options and Security Futures Principal, but only for purposes of supervising a member firm's options activities.[8] The Series 4 examination tests a candidate's knowledge of options trading generally, the NASD rules applicable to trading of option contracts, and the rules of registered clearing agencies for options. The Series 4 examination covers, among other things, equity options, foreign currency options, index options, and options on government and mortgage-backed securities.

The Series 4 examination program is shared by NASD and the following SROs: the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. NASD understands that the other SROs also will file with the Commission similar revisions to the Series 4 examination program.

A committee of industry representatives, together with NASD staff, recently undertook a review of the Series 4 examination program. As a result of this review and as part of an ongoing effort to align the examination more closely to the supervisory duties of a Series 4 principal, NASD is proposing to modify the content of the examination to track the functional workflow of a Series 4 principal. More specifically, NASD is proposing to revise the main section headings and the number of questions on each section of the Series 4 study outline as follows: Options Investment Strategies, decreased from 35 to 34 questions; Supervision of Sales Activities and Trading Practices, increased from 71 to 75 questions; and Supervision of Employees, Business Conduct, and Recordkeeping and Reporting Requirements, decreased from 19 to 16 questions. NASD is further proposing revisions to the study outline to reflect the new SEC short sale requirements. The revised examination continues to cover the areas of knowledge required to supervise options activities.

NASD is proposing similar changes to the corresponding sections of the Series 4 selection specifications and question bank. The number of questions on the Series 4 examination will remain at 125,

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] NASD also is propoosing corresponding revisions to the Series 4 question bank, but based upon instruction from the Commission staff, NASD is filing SR–NASD–2005–025 for immediate effectiveness, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. The question bank is available for Commission review.

[6] 17 CFR 240.24b–2.

[7] 15 U.S.C. 78*o*–3(g)(3).

[8] A Registered Options and Security Futures Principal also must complete a firm-element continuing education program that addresses security futures and a principal's responsibilities for security futures before such person can supervise security futures activities.

and candidates will have three hours to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

2. Statutory Basis

NASD believes that the proposed revisions to the Series 4 examination program are consistent with the provisions of sections 15A(b)(6)[9] and 15A(g)(3) of the Act,[10] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[11] and Rule 19b–4(f)(1) thereunder,[12] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the Series 4 examination program no later than April 29, 2005. NASD will announce the implementation date in a *Notice to Members* to be published no later than 60 days after SEC Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–025. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–025 and should be submitted on or before March 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–738 Filed 2–22–05; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78*o*–3(g)(3).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51190; File No. SR-NYSE–2005–06]

Self-Regulatory Organizations; New York Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Annual Fee to be Paid by Participants in the Medallion Guarantee Program

February 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 7, 2005, the New York Stock Exchange (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in items I, II, and III below, which items have been prepared primarily by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to increase the application and annual charge to be paid by participants in the medallion signature guarantee program maintained by the NYSE from $300.00 per year to $1,000.00 per year.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule is to change the application and annual charge to be paid by participants in the medallion signature program (''MSP'') maintained by the NYSE from $300.00 to $1000.00 per year. In 1992, the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the NYSE.

Commission approved NYSE's implementation of its signature guarantee program, now referred to as the MSP.[3] At that time, the NYSE specified that participants in the MSP would bear the administrative expenses in connection with the program, which at that time was a charge of $300.00 to be paid upon filing an application to the program and annually thereafter. The $300.00 charge to participants in the MSP has remained unchanged since 1992.

In recent years the administrative costs for the MSP have increased substantially. These increases relate not only to internal costs but also to the costs for liability insurance premiums for blanket insurance coverage under the program, and for an outside vendor to provide administrative assistance, and for a website for use by participants in the program. Effective January 2005, the charge to members participating in the MSP will increase to $1,000.00 and will be payable upon a participant's filing an application to the MSP and annually thereafter. The NYSE will bill MSP participants the increased fee for 2005 in January 2005.

The proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act[4] and the rules and regulations thereunder applicable to the NYSE because it provides for equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. The NYSE will notify the Commission of any written comments received by the NYSE.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder because the proposed rule is establishing or changing a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR-FICC–2005–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2005–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE and on the NYSE's Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–06 and should be submitted on or before March 16, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–735 Filed 2–22–05; 8:45 am]

BILLING CODE 8010–01–P

[3] Securities Exchange Act Release No. 31388 (October 30, 1992), 57 FR 53366 (November 9, 1992), [SR File No. NYSE–92–16] (order approving implementation of a signature guarantee program). The MSP is governed by NYSE Rule 200.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments. Notice of public hearing.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also provides multiple issues for comment, some of which are contained within proposed amendments.

The specific proposed amendments and issues for comment in this notice are as follows: (1) A proposed amendment to implement sections 2 and 5 of the Identity Theft Penalty Enhancement Act, Public Law 108–275 and a related issue for comment; (2) a proposed amendment to implement the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Public Law 108–237 and related issues for comment; (3) an issue for comment on how to implement the directive to the Commission in section 3 of the Anabolic Steroid Control Act of 2004, Public Law 108–358; and (4) proposed amendments that make various

technical and conforming amendments to the guidelines.

DATES: (1) Proposed Amendments and Issues for Comment.—Written public comment regarding the proposed amendments and issues for comment set forth in this notice should be received by the Commission not later than March 25, 2005.

(2) Public Hearing.—The Commission has scheduled a public hearing on its proposed amendments for April 12, 2005, at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002–8002. A person who desires to testify at the public hearing should notify Michael Courlander, Public Affairs Officer, at (202) 502–4590, not later than March 10, 2005. Written testimony for the public hearing must be received by the Commission not later than March 28, 2005. Timely submission of written testimony is a requirement for testifying at the public hearing. The Commission requests that, to the extent practicable, commentators submit an electronic version of the comment and of the testimony for the public hearing. The Commission also reserves the right to select persons to testify at any of the hearings and to structure the hearings as the Commission considers appropriate and the schedule permits. Further information regarding the public hearing, including the time of the hearing, will be provided by the Commission on its Web site at *http://www.ussc.gov*.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p).

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part on comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

The Commission also requests public comment regarding whether the Commission should specify for retroactive application to previously sentenced defendants any of the proposed amendments published in this notice. The Commission requests comment regarding which, if any, of the proposed amendments that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *http://www.ussc.gov*.

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure, Rule 4.4.

Ricardo H. Hinojosa,

Chair.

1. Proposed Amendment: Aggravated Identity Theft.

Synopsis of Proposed Amendment: This proposed amendment implements sections 2 and 5 of the Identity Theft Penalty Enhancement Act, Public Law 108–275, 118 Stat. 831 (''the Act''), which creates two new criminal offenses and provides a specific directive to the Sentencing Commission regarding the upward adjustment at § 3B1.3 (Abuse of Position of Trust/Special Skill). First, the Act creates a new offense at 18 U.S.C. 1028A(a)(1) that prohibits the unauthorized transfer, use, or possession of a means of identification of another person during, or in relation to, specific enumerated felonies. These felonies consist of various types of fraud, including false statements and documents in connection with immigration and citizenship laws, passports, visas, the Social Security Act, and the acquisition of firearms. A conviction under 18 U.S.C. 1028A(a)(1) carries a two-year mandatory sentence that must run consecutive to any other term of imprisonment, including the sentence for the underlying felony conviction. The new criminal offense at 18 U.S.C. 1028A(b)(1) prohibits the unauthorized transfer, use, or possession of a means of identification of another person during, or in relation to, specific felonies enumerated in 18 U.S.C. 2332b(g)(5)(B) (''federal crimes of terrorism''). Section 1028A(b)(1) provides a five-year mandatory sentence that must run consecutive to any other term of imprisonment, including the sentence for the underlying felony conviction.

In response to the creation of these new offenses, the proposed amendment creates a new guideline at § 2B1.6 (Aggravated Identity Theft). The proposed guideline is patterned after § 2K2.4 (Use of a Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes). Because the new offenses carry a mandatory consecutive term of imprisonment, the proposed guideline, as does § 2K2.4, provides that the ''guideline sentence is the term of imprisonment required by statute''.

Second, section 5 of the Act directs the Commission to amend § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) to include a ''defendant [who] exceeds or abuses the authority of his or her position in order to obtain unlawfully or use without authority any means of identification. * * *'' The Act also includes a general directive to the Commission to review and amend its guidelines and policy statements to ensure that the guideline offense levels and enhancements appropriately punish identity theft offenses involving an abuse of trust. In response to the directive, the proposed amendment amends § 3B1.3 to ensure that an adjustment under this guideline applies to ''a defendant who uses his or her position in order to obtain unlawfully, or use without authority, any means of identification''. To avoid double-counting, the amendment proposes an application note that prohibits the application of any specific offense characteristic for the transfer, possession, or use of a means of identification when determining the sentence for the underlying offense in cases in which a sentence under the

new guideline is imposed in conjunction with a sentence for an underlying offense.

Finally, the proposal simplifies the application of the enhancement at § 2B1.1(b)(10), which currently covers offenses involving identity theft, access devices, and counterfeit devices, by changing it from an enhancement based on relevant conduct to an enhancement based on the offense of conviction. This is in response to comments from practitioners, since the enhancement's promulgation in 1998, that the enhancement in its current form is confusing and applied inconsistently.

Proposed Amendment:

Section 2B1.1(b)(10) is amended by striking ''offense involved (A)'' and all that follows through ''of, another means of identification,'' and inserting ''defendant was convicted of an offense under 18 U.S.C. 1028(a)(5), (a)(7), or § 1029(a)(4),''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by striking Application Note 9 and inserting the following:

''9. Application of Subsection (b)(10).—Subsection (b)(10) provides a 2-level increase, and a minimum offense level of level 12, if the defendant was convicted of an offense under 18 U.S.C. 1028(a)(5) or (a)(7), or § 1029(a)(4).''.

Chapter Two, part B, subpart 1 is amended by adding at the end the following new guideline and accompanying commentary:

''§ 2B1.6. Aggravated Identity Theft

(a) If the defendant was convicted of violating 18 U.S.C. 1028A, the guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to that count of conviction.

Commentary

Statutory Provision: 18 U.S.C. 1028A.

Application Note

1. Inapplicability of Chapter Two Enhancement.—If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for the transfer, possession, or use of a means of identification when determining the sentence for the underlying offense. A sentence under this guideline accounts for this factor for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). ''Means of identification'' has the meaning given that term in 18 U.S.C. 1028(d)(7).''.

The Commentary to § 3B1.3 captioned ''Application Notes'' is amended in Note 1 by inserting ''Public or Private Trust'.—'' before ''Public or private trust'' refers to''; and by striking the second paragraph and inserting the following:

''Notwithstanding the preceding paragraph, an abuse of position of trust will apply to—

(A) any employee of the U.S. Postal Service who engages in the theft or destruction of undelivered United States mail, due to the special nature of the United States mail; or

(B) a defendant who uses his or her position in order to obtain unlawfully, or use without authority, any means of identification. ''Means of identification'' has the meaning given that term in 18 U.S.C. 1028(d)(7).''.

The Commentary to § 3B1.3 captioned ''Application Notes'' is amended by inserting at the end the following:

5. ''Inapplicability of Adjustment.''Do not apply this adjustment if the defendant is convicted of 18 U.S.C. 1028A or the base offense level or specific offense characteristic in Chapter Two incorporates this factor.''.

The Statutory Index (Appendix A) is amended by inserting after the line referenced to 18 U.S.C. 1028 the following new line:

''18 U.S.C. 1028A 2B1.6''.

Issue for Comment: The Commission seeks comment regarding whether, and if so, how, the guidelines should be amended to address section 2 of the Identify Theft Penalty Enhancement Act. For example, is policy guidance at § 5G1.2 (Sentencing on Multiple Counts of Conviction) appropriate to prevent disproportionate sentences that can arise from multiple convictions of statutes carrying mandatory, consecutive penalties sentenced at the same time? Section 2 of the Identity Theft Penalty Enhancement Act amends 18 U.S.C. 1028A(b)(4) to provide that ''a term of imprisonment imposed on a person for a violation of this section may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the Sentencing Commission. * * *''

2. Proposed Amendment: Antitrust Offenses.

Synopsis of Proposed Amendment: This proposed amendment responds to the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Public Law 108–237, Title II (the ''Act''). Section 215 of the Act increases both the fines and statutory maximum terms of imprisonment for Sections 1, 2, and 3 of the Sherman Antitrust Act. The Act increased the maximum term of imprisonment from 3 years to 10 years, increased the maximum fine for corporations from $10,000,000 to $100,000,000, and increased the maximum fine for individuals from $350,000 to $1,000,000.

Congress has expressed an expectation that the Commission modify the antitrust guideline, § 2R1.1. The Act's Legislative History states:

This section (Section 215 of the Act) will require the United States Sentencing Commission to revise the existing antitrust sentencing guidelines to increase terms of imprisonment for antitrust violations to reflect the new statutory maximum. No revision in the existing guidelines is called for with respect to fines, as the increases in the Sherman Act statutory maximum fines are intended to permit courts to impose fines for antitrust violations at current guideline levels without the need to engage in damages litigation during the criminal sentencing process. (Supplemental Legislative History, Cong. Rec. H 3658, June 2, 2004).

The proposed amendment provides for a base offense level of level [12][14] at the guideline for antitrust offenses, § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors). This increase in the base offense level recognizes congressional concern that some of the offenses currently referenced to § 2R1.1 do not receive punishment commensurate with their social impact. The increased base offense level also fosters greater proportionality between § 2R1.1 offenses and fraud offenses sentenced pursuant to § 2B1.1. Sentences for fraud offenses were made more severe due to various changes, notably an expansion of the number of additional offense levels at the ''loss table'' found at § 2B1.1(b)(1), effective November 1, 2001.

The proposed amendment also eliminates the 1-level increase for ''bid-rigging'' cases at § 2R1.1(b)(1). Commission data indicate that a significant majority of the cases historically sentenced under § 2R1.1 are ''bid-rigging'' cases. Because of the demonstrated frequency of such offenses, this aggravating behavior has been incorporated into the new base offense level.

Proposed Amendment:

Section 2R1.1(a) is amended by striking ''10'' and inserting ''[12][14]''.

Section 2R1.1(b) is amended by striking subdivision (1); and by redesignating subdivision (2) as subdivision (1).

The Commentary to § 2R1.1 captioned ''Background'' is amended by striking the fifth paragraph.

Issues for Comment:

(1) The Commission seeks comment regarding whether the base offense level in § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors) for antitrust offenses should be raised and, if so, to what extent.

(2) The Commission requests comment regarding whether the volume of commerce table at subsection (b)(2) of § 2R1.1 should (A) be amended to change the threshold values that trigger the offense level enhancements therein; (B) be modified to reduce the number of levels in the volume of commerce table; and/or (C) be modified to include an additional category or categories for offenses that affect volumes of commerce significantly in excess of $100,000,000.

3. Issue for Comment: Anabolic Steroids.

Issue for Comment: Section 3 of the Anabolic Steroid Control Act of 2004, Public Law 108–358 (the ''Act''), directs the Commission to:

''(1) review the Federal sentencing guidelines with respect to offenses involving anabolic steroids;

(2) consider amending the Federal sentencing guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use; and

(3) take such other action that the Commission considers necessary to carry out this section.''.

Anabolic steroids are Schedule III controlled substances under 21 U.S.C. 812. Under 21 U.S.C. 841(b)(1)(D), any person who knowingly or intentionally trafficks in, or possesses with intent to traffic in, a Schedule III controlled substance shall be sentenced to a term of imprisonment of not more than 5 years' imprisonment, or if the person committed the offense after a prior conviction for a felony drug offense has become final, not more than 10 years' imprisonment.

A defendant who has a prior anabolic steroid offense is subject to the 10-year maximum term of imprisonment because section (2)(a)(2) of the Act amended 21 U.S.C. 802(44) to include anabolic steroid offenses within the meaning of ''felony drug offense(s)'' for purposes of the increased statutory maximum term of imprisonment.

Currently § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) of the guidelines provides in the Drug Equivalency Tables that one unit of a Schedule III substance is the equivalent of one gram of marihuana for purposes of determining the defendant's base offense level under the Drug Quantity Table. For all Schedule III controlled substances except anabolic steroids, one unit equals one tablet or, if in liquid form, 0.5 milliliter. For anabolic steroids, one unit equals 50 tablets, or if in liquid form, 10 cubic centiliters.

The Commission requests comment regarding how the Commission should implement the directive in section 3 of the Act. Specifically, should the Commission amend the Drug Equivalency Tables and/or the Notes to the Drug Quantity Table in § 2D1.1 to provide a heightened marihuana equivalency for anabolic steroids, and, if so, what should be the amended equivalency rate? For example, should the Commission treat anabolic steroids the same as other Schedule III controlled substances so that one tablet of anabolic steroids would equal one unit of Schedule III controlled substance and hence would equal one gram of marihuana?

4. Proposed Amendment: Miscellaneous Amendments Package.

Synopsis of Proposed Amendment: This proposed amendment makes changes to various sentencing guidelines as follows:

(A) Makes technical amendments to several guidelines to conform to changes made in the public corruption guidelines in the 2004 amendment cycle (see Appendix C to the Guidelines Manual, Amendment 666). Specifically, the proposed amendment corrects title references to § 2C1.1 in §§ 2B3.3(c)(1), 2C1.3(c)(1), and 2C1.8(c)(1) and strikes references to § 2C1.7 in §§ 3D1.2(d) and 8C2.1.

(B) Clarifies Application Note 15 of the fraud guideline, § 2B1.1, to make clear that, in order for § 2B1.1(c)(3) to apply, the conduct set forth in the count of conviction must establish a fraud or false statement-type offense. Currently, there is some confusion with regard to whether the cross reference is applicable if the defendant only lied about another offense.

(C) Corrects the heading to § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentence in Certain Cases) in Application Note 2 of § 5D1.2 (Terms of Supervised Release).

(D) Corrects a typographical error in § 2M6.1 (Unlawful Production, Development, Acquisition, Stockpiling, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities, Biological Agents, Toxins, or Delivery Systems, Chemical Weapons, or Other Weapons of Mass Destruction; Attempt or Conspiracy).

(E) Conforms § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) to changes made to the drug guideline, § 2D1.1, in the 2004 amendment cycle (see Appendix C to the Guideline Manual, amendment 667). Specifically, the proposed amendment amends the Chemical Quantity Table in § 2D1.11(e) so that the amount of gamma-butyrolactone (GBL), at any particular offense level, is the amount that provides a 100 percent yield of gamma-hydroxybutyric acid (GHB).

(F) Clarifies Application Note 5 in the drug guideline, § 2D1.1, regarding drug analogues. The current note suggests that a drug analogue is less potent than the drug for which it is an analogue; however, by statute, an analogue can only be the same or more potent.

(G) Redesignates incorrect references in a number of Application Notes in the drug guideline, § 2D1.1.

Proposed Amendment:

(A) Conforming Amendments Related to Public Corruption Amendments of 2004.

Section 2B3.3(c)(1) is amended by inserting ''; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions'' after ''; Extortion Under Color of Official Right''.

Section 2C1.3(c)(1) is amended by inserting ''; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions'' after ''; Extortion Under Color of Official Right''.

Section 2C1.8(c)(1) is amended by inserting ''; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions'' after ''; Extortion Under Color of Official Right''.

Section 3D1.2(d) is amended by striking ''2C1.7,''.

Section 8C2.1 is amended in subsection (a) by striking '', 2C1.7''.

(B) Commentary to Fraud Cross-Reference in § 2B1.1

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 15 in the first sentence by inserting ''involving fraudulent conduct that is'' before ''more aptly covered by another guideline.''; in the second sentence by inserting ''involves fraudulent conduct

that'' before ''is also covered by a more specific statute.''; and at the end by inserting the following:

''Subsection (c)(3) does not apply in a case in which a defendant is prosecuted under 18 U.S.C. 1001, or a similar statute, only for making false statements to a probation officer about other criminal conduct.''.

(C) Commentary to § 5D1.2

The Commentary to § 5D1.2 captioned ''Application Notes'' is amended in Note 2 by inserting ''Limitation on'' before ''Applicability of Statutory''.

(D) Asterisked Note in § 2M6.1(b)(1)(A)

Section 2M6.1(b)(1) is amended in subdivision (A) by striking the asterisk after ''(a)(4)'' and inserting ''(A)''; and after subsection (b)(2) by striking ''***Note:** The reference to '(a)(4)' should be to '(a)(4)(A)'.''.

(E) Ratio of GBL to GHB in § 2D1.11

Section 2D1.11(e) is amended in subdivision (1) by striking ''2271 L or more of Gamma-butyrolactone;'' and inserting ''1135.5 L or more of Gamma-butyrolactone;''; in subdivision (2) by striking ''At least 681.3 L but less than 2271 L of Gamma-butyrolactone;'' and inserting ''At least 340.7 but less than 1135.5 L of Gamma-butyrolactone;''; in subdivision (3) by striking ''At least 227.1 L but less than 681.3 L of Gamma-butyrolactone;'' and inserting ''At least 113.6 L but less than 340.7 L of Gamma-butyrolactone;''; in subdivision (4) by striking ''At least 159 L but less than 227.1 L of Gamma-butyrolactone;'' and inserting ''At least 79.5 L but less than 113.6 L of Gamma-butyrolactone;''; in subdivision (5) by striking ''At least 90.8 L but less than 159 L of Gamma-butyrolactone;'' and inserting ''At least 45.4 L but less than 79.5 L of Gamma-butyrolactone;''; in subdivision (6) by striking ''At least 22.7 L but less than 90.8 L of Gamma-butyrolactone;'' and inserting ''At least 11.4 L but less than 45.4 L of Gamma-butyrolactone;''; in subdivision (7) by striking ''At least 18.2 L but less than 22.7 L of Gamma-butyrolactone;'' and inserting ''At least 9.1 L but less than 11.4 L of Gamma-butyrolactone;''; in subdivision (8) by striking ''At least 13.6 L but less than 18.2 L of Gamma-butyrolactone;'' and inserting ''At least 6.8 L but less than 9.1 L of Gamma-butyrolactone;''; in subdivision (9) by striking ''At least 9.1 L but less than 13.6 L of Gamma-butyrolactone;'' and inserting ''At least 4.5 L but less than 6.8 L of Gamma-butyrolactone;''; and in subdivision (10) by striking ''Less than 9.1 of Gamma-butyrolactone;'' and inserting ''Less than 4.5 of Gamma-butyrolactone;''.

(F) Analogues of Controlled Substances

The Commentary to Section 2D1.1 captioned ''Application Notes'' is amended in Note 5 by striking ''whether a greater quantity of the analogue is needed to produce a substantially similar effect on the central nervous system as'' and inserting ''whether the same quantity of analogue produces a greater effect on the central nervous system than''.

(G) Redesignation of Incorrect References in § 2D1.1

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 19 by striking ''(b)(5)(A)'' and inserting ''(b)(6)(A)''; in Note 20 by striking ''(b)(5)(B) or (C)'' and inserting ''(b)(6)(B) or (C)'', and by striking ''(b)(5)(C)'' and inserting ''(b)(6)(C)''; and in Note 21 by striking ''(b)(6)'' each place it appears and inserting ''(b)(7)''.

The Commentary to § 2D1.1 captioned ''Background'' is amended by striking ''(b)(5)(A)'' and inserting ''(b)(6)(A)'', and by striking ''(b)(5)(B) and (C)'' and inserting ''(b)(6)(B) and (C)''.

[FR Doc. 05–3427 Filed 2–22–05; 8:45 am]

BILLING CODE 2210–40–P

SMALL BUSINESS ADMINISTRATION

Meridian Venture Partners II, L.P., License No. 03/73–0220; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Meridian Venture Partners II, L.P., 201 King of Prussia Road, Suite 240, Radnor, PA 19087, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Meridian Venture Partners II, L.P. proposes to provide equity/debt security financing to Rufus, Inc.. The financing is contemplated for operating expenses and for general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Meridian Venture Partners and MVP Distributions Partners, both Associates of Meridian Venture Partners II, L.P., own more than ten percent of Rufus, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: February 15, 2005.

Jaime Guzman-Fournier,

Acting Associate Administrator for Investment.

[FR Doc. 05–3443 Filed 2–22–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4998]

30-Day Notice of Proposed Information Collection: Form DS–3035, J Visa Recommendation Application; OMB Control Number 1405–0135

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: J Visa Waiver Recommendation Application.
- OMB Control Number: 1405–0135.
- Type of Request: Extension of a Currently Approved Collection.
- Originating Office: CA/VO.
- Form Number: DS–3035.
- Respondents: All J visa waiver applicants.
- Estimated Number of Respondents: 10,000 per year.
- Estimated Number of Responses: 10,000 per year.
- Average Hours Per Response: 1 hour.
- Total Estimated Burden: 10,000 hours per year.
- Frequency: Once per respondent.
- Obligation to Respond: Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 23, 2005.

ADDRESSES: Direct Comments and questions to Alex Hunt, the State Department Desk Officer in Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–7860. You may submit comments by any of the following methods:

- E-mail: *ahunt@omb.eop.gov*. You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- Hand Delivery or Courier: OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503

• Fax: 202-395–6974

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Mark DesNoyer of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., L–703, Washington, DC 20522, who may be reached on 202–663–1082 or *desnoyerms@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The form collects information from aliens applying for a waiver of INA Section 212(e).

Methodology: Form DS–3035 will be directly submitted to the Waiver Review Division of the State Department's Visa Office.

Dated: January 28, 2005.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 05–3432 Filed 2–22–05; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4999]

60-Day Notice of Proposed Information Collection: Form DS–3057, Medical Clearance Update, OMB 1405–0131

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• Title of Information Collection: Medical Clearance Update.

• OMB Control Number: 1405–0131.

• Type of Request: Extension of Currently Approved Collection.

• Originating Office: Office of Medical Services, M/MED/EX.

• Form Number: DS–3057.

• Respondents: Foreign Service Officers, Federal Government Employees and family members.

• Estimated Number of Respondents: 9,800.

• Estimated Number of Responses: 9,800.

• Average Hours Per Response: 30 minutes.

• Total Estimated Burden: 4,900.

• Frequency: On occasion.

• Obligation to Respond: Required To Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from February 23, 2005.

ADDRESSES: You may submit comments by any of the following methods:

• E-mail: *willigsp@state.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

• Mail (paper, disk, or CD–ROM submissions): Department of State, Office of Medical Services, SA–1 Room L–101, 2401 E St., NW., Washington, DC 20052–0101.

• Fax: 202–663–1661.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Susan Willig, Department of State, Office of Medical Services, SA–1 Room L101, 2401 E St., NW., Washington, DC 20052–0101, who may be reached on 202–663–1754 or *willigsp@state.gov*.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Form DS–3057 is designed to collect medical information to provide medical providers with current and adequate information to base decisions on whether a federal employee and family members will have sufficient medical resources at a diplomatic mission abroad to maintain the health and fitness of the individual and family members.

Methodology: The information collected will be collected through the use of an electronic forms engine or by hand written submission using a pre-printed form.

Dated: January 30, 2005.

Maria C. Melchiorre,

Administrative Officer, Office of Medical Services, Department of State.

[FR Doc. 05–3433 Filed 2–22–05; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice 5000]

60-Day Notice of Proposed Information Collection: Form Number DS–1950, Department of State Application for Employment, OMB Control Number 1405–0139

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• Title of Information Collection: Department of State Application for Employment.

• OMB Control Number: 1405–0139.

• Type of Request: Extension of a Currently Approved Collection.

• Originating Office: Bureau of Human Resources, Office of Recruitment, Examination, Employment (HR/REE).

• Form Number: DS–1950.

• Respondents: U.S. Citizens seeking entry into the Department of State Foreign Service and individuals, sophomore through graduate level college and university students, seeking participation in the Department's student programs.

• Estimated Number of Respondents: 20,000.

• Estimated Number of Responses: 20,000.

• Average Hours Per Response: ½ hour.

• Total Estimated Burden: 12,000 hours.

• Frequency: On Occasion.

• Obligation To Respond: Required To Obtain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from February 23, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *studentinternprogram@state.gov*—You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): U.S. Department of State—SA–1, HR/REE/REC Room 518H, Attention: Kevin Bennecoff, 2401 E Street, NW., Washington, DC 20522.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Kevin M. Bennecoff, Bureau of Human Resources, Recruitment Division, Student Programs, U.S. Department of State, Washington, DC 20520, who may be reached on 202–261–8869 or by e-mail at *BennecoffKM@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The DS–1950 has been the primary form used by individuals to apply for certain excepted jobs at the Department of State such as Foreign Service and student intern positions. We wish to continue to use this form to clarify interpretation of applicant responses and how applicants become aware of our program opportunities. We're also seeking approval of an electronic version that will be submitted online.

Methodology: The computer-readable form will be used by applicants for certain excepted service jobs at the Department of State, such as Student Programs and Foreign Service jobs. These programs generate approximately 20,000 applications per year. Data, which are automatically extracted from the form, are necessary to determine qualifications, and selections, in accordance with Federal policies. The online version will be filled out and submitted through *careers.state.gov*.

Dated: January 31, 2005.

Ruben Torres,

Director, Bureau of Human Resources, Department of State.

[FR Doc. 05–3434 Filed 2–22–05; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 657]

Rail Rate Challenges Under the Stand-Alone Cost Methodology

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing beginning at 10 a.m. on Thursday, March 24, 2005, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of rail rate challenges under the stand-alone cost (SAC) methodology. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Thursday, March 24, 2005. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than March 14, 2005. Each speaker should also file with the Board his/her written testimony by March 18, 2005. Written submissions by interested persons who do not wish to appear at the hearing will also be due by March 18, 2005.

ADDRESSES: All notices of intent to participate and testimony may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the Board's *http://www.stb.dot.gov* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing (referring to STB Ex Parte No. 657) to: Surface Transportation Board, Attn: STB Ex Parte No. 657, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Raymond A. Atkins, (202) 565–1624. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.)

SUPPLEMENTARY INFORMATION: The Board will hold a public hearing to provide a forum for the expression of views by rail shippers, railroads, and other interested persons, on the Board's consideration of rail rate challenges under the SAC methodology. This hearing will provide a forum for the discussion of any suggestions and proposals that interested persons might wish to offer regarding the Board's consideration of rail rate reasonableness challenges under the SAC methodology. The hearing is not intended to offer a forum for discussion of pending cases, but rather is intended as an opportunity for interested persons to address broader issues that may cut across SAC cases generally.

Date of Hearing. The hearing will begin at 10 a.m. on Thursday, March 24, 2005, in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible, but no later than March 14, 2005.

Testimony. Each speaker should file with the Board his/her written testimony by March 18, 2005. Also, any interested person who wishes to submit a written statement without appearing at the March 24 hearing should file that statement by March 18, 2005.

Board Releases and Live Audio Available Via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://stb.dot.gov*. This hearing will be available on the Board's Web site by live audio streaming. To access the hearing, click on the ''Live Audio'' link under ''Information Center'' at the left side of the home page beginning at 10 a.m. on March 24, 2005.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: February 16, 2005.

Vernon A. Williams,

Secretary.

[FR Doc. 05–3430 Filed 2–22–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34624]

R.J. Corman Railroad Company/ Central Kentucky Lines, LLC—Acquisition and Operation Exemption—Line of R.J. Corman Railroad Property, LLC

R.J. Corman Railroad Company/ Central Kentucky Lines, LLC (RJCC),[1] a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by sublease from its corporate affiliate R.J. Corman Railroad Property, LLC (Railroad Property) and operate a line of railroad in Louisville, KY, known as the Water Street Lead, extending from the southeast edge of the Mellwood Avenue crossing of the Water Street Lead at or near milepost OTR 4.74 (also known as milepost OOT 1.8) on CSX Transportation, Inc.'s (CSXT) Louisville Terminal Subdivision to the end of track north of River Road, a total distance of approximately 2.4 miles, along with associated industry leads and switch tracks.[2] The Water Street Lead is owned by CSXT and will be leased by Railroad Property. RJCC will also acquire by assignment from Railroad Property incidental overhead trackage rights on a CSXT line between Louisville and Anchorage, KY, on CSXT's LCL Subdivision between the Water Street Lead and milepost 12.49 at HK Tower in Anchorage, a distance of approximately 10.75 miles (the Anchorage Trackage Rights), to allow connection with other RJCC operations at the latter location.[3]

This transaction is related to STB Finance Docket No. 34625, *R.J. Corman Railroad Property, LLC—Lease Exemption—Line of CSX Transportation, Inc.*, wherein Railroad Property seeks to lease the Water Street Lead and acquire the Anchorage Trackage Rights from CSXT.

RJCC certifies that its projected revenues as a result of this transaction will not result in RJCC becoming a Class II or Class I rail carrier. But, because RJCC's projected annual revenues will exceed $5 million, RJCC certified to the Board on December 7, 2004, that, prior to that date, it sent the required notice of the transaction to the national offices of all labor unions representing employees on the affected lines and posted a copy of the notice at the workplace of the employees on the affected lines. *See* 49 CFR 1150.42(e).

RJCC stated that it intended to consummate the transaction on February 5, 2005, and commence operations on February 7, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34624, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Ronald A. Lane, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: February 15, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–3429 Filed 2–22–05; 8:45 am]

BILLING CODE 4915–01–P

[1] RJCC is controlled by Richard J. Corman, who also controls eight other Class III rail carriers in the eastern United States.

[2] According to RJCC, an agreement has been reached with Railroad Property providing for RJCC's sublease and operation of the Water Street Lead immediately upon Railroad Property's lease of the Water Street Lead from CSXT. The agreement also provides for the assignment of the Anchorage Trackage Rights from Railroad Property to RJCC.

[3] Railroad Property also will assign to RJCC its operating rights over CSXT between the Water Street Lead and CSXT's Osborne Yard in Louisville for purposes of effectuating interchange.

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of two public meetings of the President's Advisory Panel on Federal Tax Reform.

DATES: The meetings will be held on Tuesday, March 8, 2005, in the Tampa, Florida area, and on Wednesday, March 16, 2005, in the Chicago, Illinois area. Both meetings will begin at 9:30 a.m.

ADDRESSES: Due to exceptional circumstances concerning scheduling, this Notice is being published at this time; however, the venues have not been identified to date. Venue information will be posted on the Panel's Web site at *http://www.taxreformpanel.gov* as soon as it is available.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov*.

SUPPLEMENTARY INFORMATION:

Purpose: The March 8 meeting is the third meeting of the Advisory Panel, and will focus on how our tax system affects business and entrepreneurship. The March 16 meeting is the fourth meeting of the Advisory Panel and will focus on examining the impact of tax incentives on taxpayers' decisions.

Comments: Interested parties are invited to attend these meetings; however, no public comments will be heard at these meetings. Any written comments with respect to these meetings may be mailed to The President's Advisory Panel on Federal Tax Reform,1440 New York Avenue, NW., Suite 2100, Washington, DC 20220. On February 16, 2005, the Panel requested written comments in response to four specific questions about the Federal tax system. For additional information regarding this request for comments, please see *http://www.taxreformpanel.gov/contact*. All written comments will be made available to the public.

Records: Records are being kept of Advisory Panel proceedings and will be available at the Internal Revenue Service's FOIA Reading Room at 1111 Constitution Avenue, NW., Room 1621, Washington, DC 20024. The Reading Room is open to the public from 9 a.m. to 4 p.m., Monday through Friday except holidays. The public entrance to the Reading Room is on Pennsylvania Avenue between 10th and 12th streets. The phone number is (202) 622–5164 (not a toll-free number). Advisory Panel documents, including meeting announcements, agendas, and minutes, will also be available on *http://www.taxreformpanel.gov*.

Dated: February 18, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–3571 Filed 2–22–05; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–154000–04]

Proposed Collection; Comment Request for Regulation Project; Withdrawal

AGENCY: Internal Revenue Service (IRS).

ACTION: Withdrawal of notice.

SUMMARY: This document withdraws a notice and request for comments that was published in the **Federal Register** on February 2, 2005 (70 FR 5510) that solicited comments on proposed regulations (REG–154000–04) relating to Diesel Fuel and Kerosene Excise Tax and Dye Injection (OMB No. 1545–1418).

SUPPLEMENTARY INFORMATION:

Background

The IRS is withdrawing the request for comments because the new regulations have not yet been fully developed and are unavailable at this time. The IRS will announce its plan to submit the Information Collection Request in subsequent issues of the **Federal Register** that will include the regulations. An opportunity to provide comments will be included when the new regulations are completed and published in the **Federal Register**.

Withdrawal of Notice and Request for Comments

Accordingly, the notice and request for comments (REG–154000–04) that was published in the **Federal Register** on February 2, 2005 (70 FR 5510) which was the subject of FR Doc. 05–1950, is withdrawn.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–3459 Filed 2–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–21

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–21, Debt Roll-Ups.

DATES: Written comments should be received on or before April 25, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Debt Roll-Ups.

OMB Number: 1545–1647.

Revenue Procedure Number: Revenue Procedure 2001–21.

Abstract: Revenue Procedure 2001–21 provides for an election that will facilitate the consolidation of two or more outstanding debt instruments into a single debt instrument. Under the election, taxpayers can treat certain exchanges of debt instruments as realization events for federal income tax purposes even though the exchanges do not result in significant medications under section 1.1001–3 of the Income Tax Regulations.

Current Actions: There is no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 75.

The burden for the collection of information is reflected in the burden of Form 4868, Application for Automatic Extension of Time to File U.S. Individual Tax Return.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–3460 Filed 2–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Committee will be discussing issues pertaining to the IRS administration of the Earned Income Tax Credit.

DATES: The meeting will be held Thursday, March 17, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be held Thursday, March 17, 2005, from 2 p.m. to 3:30 p.m. e.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. Due to limited conference lines, notification of intent to participate in

the telephone conference call meeting must be made in advance by contacting Audrey Y. Jenkins. To confirm attendance or for more information, Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085. If you would like a written statement to be considered, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post your comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 17, 2005.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 05–3461 Filed 2–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee March 2005 Public Meeting

Summary: Pursuant to United States Code, Title 31, section 5135 (b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for March 15, 2005. The purpose of this meeting is to advise the Secretary of the Treasury on designs pertaining to the coinage of the United States and for other purposes.

Date: March 15, 2005.

Time: 1 p.m. to 4 p.m.

Location: United States Mint, 801 9th Street, NW., Washington, DC, 2nd floor, Conference Room A.

Subject: Consider state commemorative quarter-dollar coin design candidates and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and location.

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional gold medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

For Further Information Contact: Madelyn Simmons Marchessault, United States Mint Liaison to the CCAC, 801 Ninth Street, NW., Washington, DC 20220, or call 202–354–6669.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: Public Law 108–15 (April 23, 2003).

Dated: February 16, 2005.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 05–3412 Filed 2–22–05; 8:45 am]

BILLING CODE 4810–37–P

Corrections

Federal Register

Vol. 70, No. 35

Wednesday, February 23, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0001; FRL–7871–7]

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

Correction

In rule document 05–2616 beginning on page 7041 in the issue of February 10, 2005, make the following correction:

§52.2270 [Corrected]

On page 7044, in § 52.2270(c), in the table, in the fourth column ''EPA approval date'', in the first through the 14th entries ''[Insert date of FR publication]'' should read ''[Insert FR page number where document begins]''.

[FR Doc. C5–2616 Filed 2–22–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
February 23, 2005

Part II

Environmental Protection Agency

40 CFR Parts 51 and 52

Prevention of Significant Deterioration for Nitrogen Oxides; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD–FRL–7875–1; E–Docket ID No. OAR–2004–0013 (Legacy Docket No. A–87–16)]

RIN–2060–AM33

Prevention of Significant Deterioration for Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: To preserve the air quality in national parks and other areas that are meeting the national ambient air quality standards (NAAQS) for nitrogen dioxide (NO_2), EPA is reevaluating the increments for NO_2 that were first established in 1988 under its program to prevent significant deterioration of air quality (PSD program). The EPA is initiating this rulemaking action to comply with a 1990 court ruling that directed the Agency to consider and harmonize the statutory criteria for establishing PSD regulations for nitrogen oxides (NO_X) contained in sections 166(c) and 166(d) of the Clean Air Act (CAA or Act).

After an initial reevaluation of the existing NO_2 increments under these statutory criteria, EPA is proposing three options. One proposed option is not to change the existing increments. We are also proposing two other options that would allow States to use alternative approaches in lieu of the existing increments for NO_2 to satisfy the statutory criteria for preventing significant deterioration of air quality due to emissions of NO_X. These proposed options include implementation of either an EPA-administered cap and trade program or a State planning approach.

DATES: *Comments.* Comments must be received on or before April 25, 2005.

Public Hearing. If anyone contacts EPA requesting a public hearing by March 15, 2005, we will hold a public hearing on or about March 25, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0013, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@email.epa.gov*.
- Fax: (202) 566–1741.
- Mail: Attention Docket ID No. OAR–2004–0013, U.S. Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).
- Hand Delivery: Attention Docket Number OAR–2004–0013, U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2004–0013 (Legacy Docket No. A–87–16). The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the U.S. Environmental Protection Agency, EPA West (Air Docket), Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone for the Air Docket is (202) 566–1742.

Public Hearing. People interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Chandra Kennedy, OAQPS, Integrated Implementation Group, Information Transfer and Program Integration Division (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5319 or e-mail *kennedy.chandra@epa.gov*, at least 2 days in advance of the public hearing. People interested in attending the public hearing must also call Ms. Kennedy to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. If a public hearing is held, it will be held at 10 a.m. in EPA's Auditorium in Research Triangle Park, North Carolina, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Dan deRoeck, Information Transfer and Program Integration Division (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5593, fax (919) 541–5509, or e-mail at *deroeck.dan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this proposed rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups:

Industry group	SIC [a]	NAICS [b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122
Petroleum Refining	291	324110
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510
Natural Gas Liquids	132	211112
Natural Gas Transport	492	486210, 221210
Pulp and Paper Mills	261	322110, 322121, 322122, 322130
Paper Mills	262	322121, 322122
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213
Pharmaceuticals	283	325411, 325412, 325413, 325414

[a] Standard Industrial Classification
[b] North American Industry Classification System.

Entities potentially affected by the proposal also include States, local permitting authorities, and Indian Tribes whose lands contain new and modified major stationary sources.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI

Do not submit proprietary or confidential business information (CBI) to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send an additional copy, clearly marked as CBI, as above, to: Mr. Roberto Morales, OAQPS Document Control Officer (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (*e.g.*, subject heading, **Federal Register** proposal publication date and reference page number(s)).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

C. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of today's proposed rule is also available on the World Wide Web through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of today's proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

D. How Is this Preamble Organized?

The information presented in this preamble is organized as follows:

I. General Information
A. Does This Action Apply To Me?
B. What Should I Consider as I Prepare My Comments for EPA?
C. Where Can I Obtain Additional Information?
D. How Is This Preamble Organized?
II. Overview of Today's Proposed Action
A. Option 1: Retain Existing Increment System for NO_X
B. Option 2: Allow States To Use a Cap and Trade Program in Lieu of an Increment System for NO_X
C. Option 3: Allow States Flexibility To Use a State Planning Approach in Lieu of an Increment System for NO_X
III. Background
A. PSD Program
B. Existing Section 166 Regulations for NO_X
1. Statutory Provisions
2. The 1988 NO_2 Increments
C. Court Decision
IV. Legal Authority
A. Interpretation on Remand: Harmonizing Sections 166(c) and 166(d) of the Clean Air Act
B. Interpretation on Remand: The Section 166(c) Factors
1. Numerical Measures by Which Permit Application May Be Evaluated
2. Protect Air Quality Values
3. Protect Public Health and Welfare From Adverse Effects Notwithstanding Attainment of NAAQS
4. Ensure Economic Growth Consistent With Preservation of Existing Clean Air Resources

C. EPA's Authority To Fulfill Section 166 Requirements by Granting States Flexibility To Adopt Alternative Measures in Their SIPs
V. Health and Welfare Effects of NO_X
A. Scope of Effects EPA Proposes To Consider
B. Data Included in Review
C. Analysis of Effects
1. Health Effects
2. Welfare Effects
VI. Proposed Actions
A. Retain Existing Increment System for NO_X
1. How Existing Characteristics of the Regulatory Scheme Fulfill Statutory Criteria
2. Proposed Actions Regarding Characteristics of NO_2 Increments
B. Regional Cap and Trade Program
1. Description of Cap and Trade Programs
2. Using a Cap and Trade Program in Lieu of an Increment System for NO_X
C. State Planning Approach
1. Description of State Planning Approach
2. Using State Planning Approach in Lieu of an Increment System for NO_X
VII. Other Alternative Considered
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

II. Overview of Today's Proposed Action

To ensure protection of the air quality in national parks and other areas that meet the NAAQS for NO_2, EPA is reevaluating the NO_2 increments that were first established in 1988 under the PSD program. In accordance with the directions of a 1990 court ruling, the Agency is conducting this review to consider and harmonize the statutory criteria, contained in subsections 166(c) and 166(d) of the Act, that govern the content of EPA's pollutant-specific PSD regulations for NO_X. The EPA is proposing to apply these criteria using the ''contingent safe harbor'' approach that was suggested by the court as an appropriate way to ensure that EPA's PSD regulations for nitrogen oxides will prevent significant deterioration of air quality due to emissions of NO_X in parks and other areas that are either designated to be in attainment with the NAAQS or are unclassifiable.

Today's proposal includes three options to address our responsibility to promulgate pollutant-specific regulations to prevent significant deterioration of air quality from emissions of NO_X and to preserve, protect and enhance the air quality in our national parks and other areas of special interest. The first option is to retain the existing regulatory format using the increments that we originally adopted in 1988. We also propose two alternative approaches that we believe would satisfy the goals and objectives of the statutory PSD program in lieu of the existing NO_2 increments. These two additional options, for which we are seeking public comment today, would permit States to adopt a specific market-based cap and trade approach or to demonstrate that strategies and measures in their State Implementation Plans (SIPs), in conjunction with other Federal requirements, will prevent significant deterioration of air quality due to emissions of NO_X. Each of these options is summarized immediately below and described in greater detail in section VI of this preamble.

A. Option 1: Retain Existing Increment System for NO_X

The EPA is reviewing whether, considering the criteria in section 166(c), EPA should establish different increments for NO_X than the ones that were adopted in 1988. The existing increments were established as a percentage of the NAAQS, and were based on the ambient measure (NO_2) and the same time period (annual) as the NAAQS. An increment with these characteristics satisfies the minimum requirements of section 166(d) of the Act for preserving the air quality in parks and other attainment and unclassifiable areas. In accordance with the ''contingent safe harbor'' approach, EPA is undertaking this additional review to determine whether the criteria in section 166(c) indicate that it is necessary for EPA to deviate from this ''safe harbor'' in order to satisfy the criteria in section 166(c).

Based on our initial review of the existing NO_2 increments under these statutory criteria, one option is to retain the existing PSD regulations for NO_X, which includes the existing NO_2 increments, without modification because we believe the existing regulations protect the air quality in national parks and other attainment or unclassifiable areas, within the context of the criteria of section 166(c). Our review has considered and balanced the criteria in section 166(c) and the incorporated goals and purposes of the PSD program set forth in section 160 of the Act. We have also reviewed the existing regulatory framework of the Agency's PSD regulations for NO_X and the scientific and technical information pertaining to the health, welfare, and ecological effects of NO_X. In light of this review, EPA believes that the statutory requirements are met by retaining annual NO_2 increments based on the percentages of the NAAQS employed to set the increments for sulfur dioxide (SO_2). The available research on health and welfare effects indicates that the existing increments, in conjunction with the case-by-case permit review for additional impacts and impairment of air quality related values (AQRV), fulfills the criteria in section 166(c). The EPA requests comment on this option and its supporting review.

B. Option 2: Allow States To Use a Cap and Trade Program in Lieu of an Increment System for NO_X

As an alternative approach to retaining the existing increment system for NO_X, we are soliciting comments on a proposed option that would allow States to prevent significant deterioration of air quality due to emissions of NO_X by implementing the model cap and trade program for EGUs contained in our proposed Clean Air Interstate Rule (CAIR).[1] A State that implements this program to address NO_X emissions would no longer be required to conduct certain source-specific analyses, including the current NO_2 increment analysis.

This option would require States to revise their SIPs to include a cap and trade program to reduce NO_X emissions in accordance with statewide emissions budgets prescribed by EPA. Neither the statewide budget nor the regional cap would be a legally enforceable limit on total NO_X emissions but would be used as an accounting technique to determine the amount of emissions reductions that would be needed from specific source categories to satisfy the budget or cap. The requirements of the cap and trade program would be enforceable, and this would ensure that as long as emissions from sources outside of the cap did not grow more than projected, the overall regionwide budget would be met.

As described in greater detail in section VI.B of this preamble, we believe that such a cap and trade program, while designed to address other CAA program requirements, is also an effective alternative to

[1] EPA proposed the CAIR, originally called the Interstate Air Quality Rule (IAQR), on January 30, 2004 (69 FR 4566), followed by a supplemental notice of proposed rulemaking on June 10, 2004 (69 FR 32684), to reduce emissions of SO_2 and NO_X in 29 States and the District of Columbia to contribute to the attainment of the $PM_{2.5}$ and 8-hour ozone NAAQS in a number of eastern States.

increments for preventing significant deterioration from emissions of NO_X. The EPA has utilized this approach with considerable success in several instances. The EPA proposed a model multi-State cap and trade program in its June 10, 2004, supplemental notice for the CAIR proposal that States could choose to adopt to meet the proposed emissions reductions requirements in a flexible and cost-effective manner. The EPA believes that the implementation of this kind of cap and trade program could bring about significant improvements in air quality and would offer many advantages over traditional command-and-control and project-by-project emissions reduction credit trading programs.

C. Option 3: Allow States Flexibility To Use a State Planning Approach in Lieu of an Increment System for NO_X

As a third option, we propose to allow a State to forego implementation of the NO_2 increments and associated requirements if the State can demonstrate that measures in its SIP, in conjunction with Federal requirements, would prevent significant deterioration of air quality from emissions of NO_X. In lieu of implementing the increment system for NO_X, a State would have to demonstrate that the specific planning goals and requirements contained in its SIP would satisfy the requirements in section 166 of the Act and the goals and purposes of the PSD program set forth in section 160.

This option would provide States with the flexibility to design a program to prevent significant deterioration of air quality from emissions of NO_X that may be more effective than increments. States would have to establish a clear planning goal that satisfies the requirements of sections 166(c) and 166(d) of the Act. To achieve this goal, a State could impose NO_X emissions limitations on any type of emissions sources it chooses, including new or existing sources. Under this option, EPA does not propose to require a State to demonstrate that its SIP includes a specific type of program that we believe is sufficient to satisfy the requirements of section 166. However, we believe that a goal to keep statewide emissions of NO_X from all sources below 1990 levels would prevent significant deterioration of air quality and satisfy the requirements of section 166 of the Act. Adoption of this goal could streamline our review of the State's demonstration, but a State would not be precluded from using another approach to prevent significant deterioration of air quality due to emissions of NO_X.

III. Background

A. PSD Program

Part C of title I of the Act contains the requirements for a component of the major new source review (NSR) program known as the Prevention of Significant Deterioration (PSD) program. This program sets forth procedures for the preconstruction review and permitting of new and modified major stationary sources of air pollution locating in areas meeting the NAAQS (''attainment'' areas) or areas for which there is insufficient information to classify an area as either attainment or nonattainment (''unclassifiable'' areas).

The applicability of the PSD program to a particular source must be determined in advance of construction and is pollutant specific. For new sources locating in an attainment or unclassifiable area, PSD applies when the source qualifies as a major source because it has the potential to emit any regulated NSR pollutant equals or exceeds either 100 or 250 tons per year (tpy) depending on the source category. In addition to reviewing the pollutant emitted at or in excess of the ''major source'' levels, the PSD permit review also covers each regulated NSR pollutant for which the area is in attainment or unclassifiable that the source would have the potential to emit in significant amounts.

For modified sources, PSD applies when an existing major stationary source undergoes a nonexcluded physical change or change in the method of operation that results in a significant net emissions increase of any regulated NSR pollutant for which the area is in attainment or unclassifiable. The PSD regulations define ''significant'' as a specific emissions rate (tons per year) for each regulated pollutant. Each regulated NSR pollutant emitted by the source must be reviewed independently for applicability purposes. Moreover, to determine the emissions of a particular pollutant for applicability purposes, the source may take into account the use of emissions control technology and restrictions on the hours of operation or rates of production, where such controls and restrictions are enforceable.[2]

[2] On December 31, 2002, we revised the PSD regulations to, among other things, enable major sources undergoing modification of existing emissions units to project future emissions increases on the basis of projected utilization of the modified equipment. Most States have not yet adopted the new provisions but they are in effect in States where EPA is the permitting authority (*i.e.*, where no State PSD rule has been approved by EPA) or where the State PSD rule incorporates the Federal regulations by reference. 67 FR 80186; 68 FR 11316 (March 10, 2003).

Once a source is determined to be subject to PSD, it must undertake a series of analyses to demonstrate that it will use the best available control technology (BACT) and will not cause or contribute to a violation of any NAAQS or incremental ambient pollutant concentration increase. In cases where the source's emissions may adversely affect an area classified as a Class I area, additional review is conducted to protect the increments and special attributes of such an area defined as ''air quality related values.''

When the permitting authority reaches a preliminary decision to authorize construction of each proposed major new source or major modification, it must provide notice of the preliminary decision and an opportunity for comment by the general public, industry, and other persons that may be affected by the major source or major modification. After considering and responding to the comments, the permitting authority may issue a final determination on the construction permit in accordance with the PSD regulations.

B. Existing Section 166 Regulations for NO_X

1. Statutory Provisions

In section 166(a) of the Act, Congress directed EPA to conduct a study and promulgate regulations to prevent significant deterioration of air quality which would result from emission of hydrocarbons, carbon monoxide, photochemical oxidants, and NO_X. Congress further specified that such regulations meet the following requirements set forth in sections 166(c) and 166(d):

> (c) Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 101 and section 160.
>
> (d) The regulations * * * shall provide specific measures at least as effective as the increments established in section 163 [for SO_2 and PM] to fulfill such goals and purposes, and may contain air quality increments, emission density requirements, or other measures.

The goals and purposes of the PSD program set forth in section 160 are as follows:

> (1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipate[d] to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air, notwithstanding attainment and maintenance of all national ambient air quality standards;

(2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value;

(3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;

(4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and

(5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

Furthermore, the goals and purposes of the CAA set forth in section 101 are as follows:

(b) * * * (1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs [; and]

(c) * * * to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this Act, for pollution prevention.

2. The 1988 NO_2 Increments

On October 17, 1988, EPA promulgated pollutant-specific PSD regulations for NO_X under section 166 of the CAA. 53 FR 40656. The EPA decided to establish NO_2 increments following the pattern enacted by Congress for the PM and SO_2 increments. These increments establish maximum increases in ambient air concentrations of NO_2 (expressed in micrograms per cubic meter ($\mu g/m^3$)) allowed in a PSD area over a baseline concentration. Emissions increases from both stationary and mobile sources are considered in the consumption of the NO_2 increments which are implemented through the PSD permitting provisions in 40 CFR parts 51 and 52.

The increment system for NO_X includes the three-tiered area classification system established by Congress in section 163 for increments of SO_2 and PM. Class I areas (including certain national parks and wilderness areas) were designated by Congress as areas of special national concern, where the need to prevent air quality deterioration is the greatest. Consequently, the allowable level of incremental change in air quality is most stringent in Class I areas. Class II areas are all areas not specifically designated in the Act as Class I areas. The increments of Class II areas are less stringent than the Class I areas and allow for a moderate degree of emissions growth. Class III areas are areas originally designated as Class II, that have been redesignated by States where higher levels of industrial development (and emissions growth) are desired, and are allowed to have the greatest increase in ambient concentration. There have been no Class III redesignations to date.

EPA based the levels of the increments for each area classification on the percentages of the NAAQS that Congress used to set the increments for SO_2 and PM. Congress used different percentages of the NAAQS to calculate the Class I increments for PM and SO_2. For the NO_2 increments, we chose the percentage that Congress used for SO_2. This decision yielded a lower Class I increment for NO_2 than would have resulted by using the PM percentage.

The existing Class I NO_2 increment is 2.5 $\mu g/m^3$ (annual average), a level of 2.5 percent of the NO_2 NAAQS. It is based on the Class I SO_2 increment, which is set at the same percentage (2.5 percent) of the SO_2 annual NAAQS. The Class II NO_2 increment is 25 $\mu g/m^3$ · 25 percent of the NO_2 NAAQS. The Class III NO_2 increment is 50 $\mu g/m^3$ · 50 percent of the NO_2 NAAQS.

EPA believed that these increments satisfied the standard in section 166(d), which requires that PSD regulations for NO_X be ''at least as effective'' as the existing section 163 increments in preventing significant deterioration of air quality due to emissions of NO_X. The EPA thought that reflecting the same percentages of the NAAQS as the SO_2 and PM increments would be at least as stringent as the statutorily established increments in terms of ambient air quality impacts. In the preamble to these regulations, EPA explained that the increments satisfied the section 166(c) criteria by providing numerical measures against which permit applications may be evaluated and stimulating improved control technology. The EPA relied on the establishment of a Class I NO_2 increment and the provisions for protecting AQRVs in section 165(d)(2) (providing a role for the Federal Land Manager (FLM) in the review of certain PSD permits prior to issuance) to protect air quality values affected by NO_X. The EPA further reasoned that these ambient concentration percentages could be used as a proxy for all the PSD purposes set forth in the statute, thus satisfying the ''goals and purposes set forth in section 101 and section 160'' incorporated by reference in section 166(c).

C. Court Decision

In 1988, the Environmental Defense Fund (now Environmental Defense, or ''ED'') filed suit in the U.S. Court of Appeals for the District of Columbia Circuit against the Administrator (*Environmental Defense Fund, Inc.* v. *Reilly*, No. 88–1882). ED argued that EPA failed to sufficiently consider several of the section 166(c) criteria. ED also argued that EPA's approach failed to satisfy the ''at least as effective'' standard under section 166(d) because EPA did not compare the NO_2 increments (set only for the annual averaging period) to the 24-hour and 3-hour increments for SO_2.

In its 1990 opinion, the court held that EPA had satisfied its obligation under section 166(d) but had not sufficiently considered whether different increments should be established under the criteria in section 166(c). More specifically, the court held that EPA's percentage-of-NAAQS approach for determining the increments satisfied the duty under section 166(d) to promulgate regulations for NO_X that were ''at least as effective'' as the increments in section 163. *Id.* at 188. As to subsection (c), however, the court held that EPA's approach of using the percentage ambient concentrations as a ''proxy'' for meeting the subsection (c) criteria overlooked the language of subsection (c), and turned subsection (c) into an option, despite its mandatory wording. Thus, the court remanded the case to EPA ''to develop an interpretation of section 166 that considers both subsections (c) and (d), and if necessary to take new evidence and modify the regulations.'' *Environmental Defense Fund* v. *EPA*, 898 F.2d 183, 190 (DC Cir. 1990) (''*EDF* v. *EPA*'').

The court identified three steps that EPA took to develop PSD regulations for NO_X under section 166. The first two steps reflected EPA's decisions to adopt regulations for NO_X that employed increments with an area classification system to implement the PSD program for NO_X. These first two steps were not controverted in *EDF* v. *EPA*, 898 F.2d at 184–85. The dispute in the *EDF* case involved only the third step, which was EPA's action to establish several characteristics of the increments by reference to the NAAQS. The

characteristics that EPA derived from the NAAQS were (1) the level of the increments using the percent-of-NAAQS-approach; (2) the time period (annual average) for the increments; and (3) the pollutant (NO_2) for which the increments were established. Since these three characteristics of the increments were the only issues controverted in the *EDF* v. *EPA* case, EPA is revisiting only these questions to satisfy the court's remand. However, we also believe it would be beneficial to consider alternative approaches to an increment system and thus are voluntarily reconsidering the first two steps in the process of developing pollutant-specific PSD regulations for NO_X.

In *EDF* v. *EPA*, the court held that, in light of the criteria in section 166(c), EPA could not use the NAAQS as the sole basis for deriving increments. However, the court held that using the NAAQS as the basis for deriving increments was permissible in determining whether the ''at least as effective'' standard under subsection (d) was met. But, with respect to subsection (c), the court stated: ''we find nothing in the language or legislative history suggesting that this duty [consideration of the goals and purposes of the statute] could be satisfied simply by referencing the NAAQS.'' *Id*. at 190. The court noted the differences between the health and welfare criteria on which the NAAQS are based (sections 108 and 109) and the ''goals and purposes'' of the PSD program set forth in section 160, highlighting the special value the PSD program places on protection of national parks. At the same time, the court recognized that ''[n]evertheless, the ambient standards are the basic measure of air quality under the [Clean Air Act], and the controlling standards by no means exclude any value that is the subject of focus under the PSD provisions.'' *Id*. at 176 (internal citations and quotations omitted). In other words, the court observed that NAAQS remain relevant to the inquiry under section 166 because they are a basic measure of air quality and may indirectly reflect some consideration, among others, of the same values that are the focus of the PSD program. However, the court indicated that we could not rely solely upon the NAAQS to comply with section 166 because this provision directs us to focus on the specific goals and purposes of PSD which are not necessarily the factors that determine the NAAQS under section 109.

Thus, the court directed EPA to reconsider the characteristics of the existing increments in light of the criteria in both sections 166(c) and 166(d). The court indicated that one permissible interpretation for harmonizing subsections (c) and (d) would be to construe subsection (d) as a ''contingent safe harbor'' or presumptive baseline. Thus, increments derived from the NAAQS could be authorized if the agency were to undertake additional analysis and make a reasoned determination that the criteria under subsection (c) do not call for different increments than the ''safe harbor'' that meets the criteria in subsection (d) of the statute.

On July 31, 2003, Environmental Defense (ED) petitioned the court to order EPA to take action in accordance with the court's earlier opinion. ED and EPA reached a settlement in which EPA agreed to propose and promulgate a rule to fully comply with the court's remand order. The settlement obligated the Agency to issue a proposal no later than September 30, 2004, and a final rule no later than September 30, 2005. However, in September 2004, EPA and ED agreed to extend the proposal deadline until February 14, 2005 in order to allow EPA more time to consider alternatives to the increment approach.

IV. Legal Authority

Section 166(a) of the Act directs EPA to develop pollutant-specific regulations to prevent the significant deterioration of air quality. Sections 166(c) and 166(d) of the Act provide more detail on the contents of those regulations. To develop pollutant-specific regulations under subsection (a), EPA must establish an overall regulatory framework for those regulations and fill in many specific details around that framework.

EPA interprets section 166 to require that its PSD regulations for a particular pollutant must, as a whole, satisfy the criteria in section 166. Thus, we believe our obligations under section 166(c) of the Act are satisfied when the entire body of pollutant-specific regulations for NO_X (including the overall regulatory framework and the specific details) satisfy the criteria in sections 166(c) and 166(d) of the Act.

In the case of NO_X, EPA established that overall framework in the 1988 rulemaking and employed NO_2 increments and an area classification system for these regulations.[3] This increment system for NO_X was modeled on the system that Congress had already established for PM and SO_2. Within this overall system, EPA then filled in specific details, including defining the characteristics of the increments to be developed for NO_X.

The dispute in *EDF* v. *EPA* involved only EPA's decisions to define the characteristics of the increments for NO_X in relation to the NAAQS. Since the basic increments and area classification system in EPA's PSD regulations for NO_X were not controverted, EPA does not interpret the court's opinion to require that the Agency reconsider these fundamental aspects of its PSD regulations for NO_X. Thus, EPA believes that it is only required at this time to reconsider the level, time period, and pollutant used in establishing increments in its PSD regulations for NO_X.

However, EPA is also requesting comment in this proposed rule on alternatives to the current increment system for NO_X. Based on the input from various stakeholders, EPA is voluntarily reconsidering whether the increment system is the most effective mechanism for fulfilling our obligations to protect parks and other attainment areas under section 166 of the Act. Thus, as alternatives to our proposing to retain the existing increment system for NO_X, we are also proposing to allow the States to implement an EPA-administered cap and trade program or a State planning approach to fulfill our obligation to establish pollutant-specific PSD regulations for NO_X.

A. Interpretation on Remand: Harmonizing Sections 166(c) and 166(d) of the Clean Air Act

We propose to harmonize the criteria set forth in sections 166(c) and 166(d) by using the ''contingent safe harbor'' approach discussed by the Court. We believe this is an appropriate reading of the statute. Subsection (c) describes the kinds of measures to be contained in the regulations to prevent significant deterioration of air quality called for in section 166(a) and specifies that these regulations are to ''fulfill the goals and purposes'' set forth in sections 160 and 101 of the Act. Then, under subsection (d), to ''fulfill such goals and purposes,'' EPA must promulgate ''specific measures at least as effective as the increments established in section 7473 of this title [section 163 of the Act].'' 42 U.S.C. 7476. Subsection (d) indicates that these specific measures may include increments but are not necessarily required to contain increments. Thus, subsection (d) can be construed to require that EPA identify a minimum level of effectiveness, or safe

[3] Under section 166(e) of the Act, a State is authorized to develop measures to prevent significant deterioration of air quality other than an area classification scheme for pollutants other than PM and SO_2 if the implementation plan contains other provisions that the Administrator finds will ''carry out the purposes in section 160 at least as effectively as an area classification plan for such pollutant.''

harbor, for the body of pollutant-specific PSD regulations adopted under section 166. Then, subsection (c) may be read to require that EPA conduct further review to determine whether, based on the criteria in subsection (c), EPA's pollutant-specific PSD regulations under section 166 should contain measures that deviate from the minimum ''safe harbor'' identified under subsection (d). As in 1988, we construe subsection (d) to require that the measures be ''at least as stringent'' as the statutory increments set forth in section 163.

In an instance where EPA opts to employ increments in its section 166 PSD regulations for a specific pollutant, we interpret this language to require that EPA, at minimum, establish increments that are consistent with the statutory increments established by Congress in that each increment (Class I, II, or III) is established in relation to the NAAQS and is set (1) at an equivalent percentage of the NAAQS as the statutory increments; (2) for the same pollutants as the NAAQS; and (3) for the same time period as the NAAQS. Under an increment approach, EPA would then conduct further review to determine whether the ''safe harbor'' increments, in conjunction with other measures adopted under the PSD program and section 166, sufficiently fulfill the criteria in subsection (c). If, after weighing and balancing the criteria set forth in subsection (c) (and the incorporated goals and purposes of the CAA in section 101 and the PSD program in section 160), EPA determines that the ''safe harbor'' increments and other measures do not satisfy these criteria, then EPA would need to develop additional regulations which may include different increments, additional increments, or additional measures to satisfy the section 166(c) criteria. If EPA determines that the ''safe harbor'' increments and associated measures satisfy the criteria in subsection (c), then it need not adopt different or additional increments or other measures as part of its PSD regulations under section 166.

B. Interpretation on Remand: The Section 166(c) Factors

EPA interprets section 166(c) of the Act to establish eight factors to be considered in the development of PSD regulations for the pollutants covered by this provision. Section 166(c) lists three specific criteria that EPA must consider in the development of PSD regulations for the pollutants covered by this provision. These three criteria indicate that PSD regulations for specific pollutants should provide (1) specific numerical measures for evaluating permit applications; (2) a framework for stimulating improved control technology; and (3) protection of air quality values. 42 U.S.C. 7476(c). In addition, section 166(c) directs that EPA's PSD regulations for specific pollutants ''fulfill the goals and purposes'' set forth in sections 101 and 160 of the Act. 42 U.S.C. 7476(c). We interpret this phrase to incorporate the five goals and purposes of the PSD program set forth in section 160 as factors that EPA must consider to comply with section 166(c) of the Act.

The Agency's view is that PSD measures that satisfy the specific goals and purposes of section 160 also satisfy the more general purposes and goals identified in section 101 of the Act. The overall goals and purposes of the CAA listed in sections 101(b) and 101(c) are general goals regarding protecting and enhancing the nation's air resources and controlling and preventing pollution. Because these broad goals are given more specific meaning in section 160, EPA does not believe it is necessary to consider them in detail when evaluating whether PSD regulations satisfy the criteria in section 166(c). In addition, the court's inquiry in *EDF* v. *EPA* focused exclusively on the specific goals and purposes of the PSD program set forth in section 160. However, because the broad purpose of the CAA set forth in section 101(b)(1) provides some additional guidance as to the meaning of the more specific PSD goal set forth in section 160(3), we discuss section 101(b)(1) further below in this limited context of interpreting one of the factors applicable under section 166.

Thus, EPA construes the term ''fulfill the goals and purposes,'' as used in section 166(c), to mean that EPA should apply the goals and purposes listed in section 160 as factors applicable to pollutant-specific PSD regulations established under section 166. The EPA's PSD regulations for NO_X should therefore be consistent with the three criteria listed in section 166(c) and the five goals and purposes listed in section 160 of the Act.

As noted above and explained further below, for the increment option in this proposal, we believe many of the eight factors applicable under section 166(c) are fulfilled by elements of the regulatory framework that were established in 1988 and not controverted in *EDF* v. *EPA*. We discuss further below how the proposed cap and trade and State planning options also satisfy these factors. The following sections provide more detail on how we propose to interpret and apply several of these factors in developing pollutant-specific PSD regulations under section 166 of the Act.

1. Numerical Measures by Which Permit Application May Be Evaluated

The first criterion in section 166(c) states that pollutant-specific PSD regulations must contain ''specific numerical measures against which permit applications may be evaluated.'' We believe an increment would clearly satisfy this criterion but do not interpret section 166 to require that we employ an increment system for every pollutant listed in this section. Section 166(d) states that our pollutant-specific PSD regulations ''may contain'' increments or ''other measures.'' We interpret this provision to allow EPA or the States to employ approaches other than an increment system, so long as such an approach fulfills the ''specific numerical measures'' criterion in section 166(c).

While an increment is the clearest example of a specific numerical measure for evaluating permit applications because of the model Congress established for PM and SO_2, the Act gives EPA the discretion to employ other types of numerical measures in PSD regulations for the other pollutants listed in section 166, such as ''nitrogen oxides.'' An increment represents the allowable marginal increase in air pollutant concentration (measured in $\mu g/m^3$. Under this approach, the permit applicant must conduct modeling to determine whether or not its emissions on a mass basis (*e.g.*, tons) will result in an air quality concentration increase in excess of the increment. However, another way to provide a numerical measure for evaluating permits could be, for instance, to establish a maximum allowable level of emissions on a mass basis (*e.g.*, tons).

Under the latter approach, permit applicants would have to show that their emissions will not cause total emissions in a given area to exceed the maximum allowable level of emissions established for that area. Under a State planning approach, the State could monitor the inventory of emissions from all sources (new and existing) and only issue a permit if the applicant's project would not cause emissions to exceed allowable levels. Using a cap and trade approach, EPA or the States could adopt regional or statewide caps on emissions of specific sources that could then be allocated to States or individual sources covered by the cap in the form of a budget or allowance. Individual permit applications would be evaluated against the cap by determining whether the applicant held a sufficient number of allowances.

2. Protect Air Quality Values

The third criterion in section 166(c) broadly states that the regulations ''shall provide * * * protection of air quality values'' without identifying the air quality values to be protected. Legislative history indicates that the term ''air quality value'' was used interchangeably with the term ''air quality related value'' (AQRV) regarding Class I lands.[4] Thus, we believe the term ''air quality values'' should be given the same meaning as ''air quality related values.''

The Act does not define AQRV, except to note that it includes visibility. Section 165(d)(1)(B). However, the legislative history provides the following explanation of AQRV:

> The term ''air quality related values'' of Federal lands designated as class I includes the fundamental purposes for which such lands have been established and preserved by the Congress and the responsible Federal agency. For example, under the 1916 Organic Act to establish the National Park Service (16 U.S.C. 1), the purpose of such national park lands ''is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.''

S. Rep. 95–127 at 36, reprinted at 3 Legislative History at 1410.

Thus, in 1996, the Agency proposed the following definition of AQRV:

> * * * visibility or a scenic, cultural, physical, biological, ecological, or recreational resource that may be affected by a change in air quality, as defined by the Federal Land Manager for Federal lands, or by the applicable State or Indian Governing Body for nonfederal lands.

61 FR 38250, 38322 (July 23, 1996). The reference to State or Indian Governing Body was to acknowledge that Congress recognized in section 164(e) that such areas also may have AQRVs to be taken into consideration.

[4] *See* S. Rep. 95–127, at 12, reprinted at 3 Legislative History at 1386, 1410 (describing the goal of protecting ''air quality values'' in ''Federal lands—such as national parks and wilderness areas and international parks,'' and in the next paragraph and subsequent text using the term ''air quality related values'' to describe the same goal); id. at 35, 36 (''The bill charges the Federal land manager and the supervisor with a positive role to protect air quality values associated with the land areas under the jurisdiction of the [FLM]'' and then describing the statutory term as ''air quality related values''). H.R. Report 95–564 at 532 (describing duty of Administrator to consider ''air quality values'' of the tribal and State lands in resolving an appeal of a tribal or State redesignation, which is described in the final bill as ''air quality related values'').

3. Protect Public Health and Welfare From Adverse Effects Notwithstanding Attainment of NAAQS

The first goal and purpose in section 160 of the Act sets forth a broad mission ''to protect public health and welfare from any actual or potential adverse effects which in the Administrator's judgment may reasonably be anticipated to occur notwithstanding attainment and maintenance of all national ambient air quality standards.'' The precise meaning of this goal is somewhat ambiguous because it appears to mirror the legal standards applicable to the promulgation of the primary and secondary NAAQS. Under section 109(b) of the Act, the primary NAAQS must ''protect the public health'' with an adequate margin of safety (section 109(b)(1)) and the secondary NAAQS must ''protect the public welfare from any known or anticipated adverse effects'' associated with ambient concentrations of the pollutant (section 109(b)(2)). The term ''welfare'' is defined in the Act to include ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate.'' Section 302(h).

When applied as a relevant factor for the content of PSD regulations for specific pollutants under section 166(c) of the Act, we do not construe this language in section 160 to require EPA to conduct a full NAAQS review every time it establishes PSD regulations for a pollutant. A NAAQS review is a rigorous scientific process,[5] and Congress gave EPA 5 years to complete this review. 42 U.S.C. 7409(d)(1). However, under section 166(a) of the Act, Congress gave EPA only 2 years to establish PSD regulations for specific pollutants. Furthermore, in cases where NAAQS were not established as of 1977, section 166(a) gave EPA 2 years after the establishment of a NAAQS to promulgate PSD regulations. This indicates that Congress intended for PSD regulations to be developed shortly after establishment of a NAAQS and before completion of the next NAAQS review in 5 years. As a result, we do not believe it is reasonable to interpret this factor to require such a rigorous review to establish PSD regulations. In addition, as discussed further below, we believe these statutory provisions indicate that Congress intended for EPA to develop PSD rules using the research compiled when establishing or reviewing a NAAQS.

In the specific context of the PSD program, we construe this charge to ''protect public health and welfare'' to require EPA to evaluate whether adverse effects may occur as a result of increases in pollution to ambient levels below the NAAQS. If such effects may occur in some areas of the country, then EPA must consider how to establish PSD regulations that protect public health and welfare against such effects where they may occur. However, we do not interpret the PSD program to require regulations that eliminate all adverse effects that may result from increases in pollution in attainment areas. The PSD program is, as its title suggests, designed to prevent ''significant deterioration'' from a baseline concentration. S. Rep. 95–127 at (3 LH at 1385) (''This legislation defines 'significant deterioration' in all clean air areas as a specified amount of additional pollution. This definition is intended to prevent any major decline in air quality currently existing in clean air areas * * *''). That is, some decline in air quality (relative to the baseline air quality concentration) is permissible for any particular area of the country that is currently achieving the NAAQS, as long as it is not ''significant.'' [6]

[5] The NAAQS process begins with the development of ''air quality criteria'' under section 108 for air pollutants that ''may reasonably be anticipated to endanger public health or welfare'' and that come from ''numerous or diverse'' sources. Section 108(a)(1). ''Air quality criteria'' must reflect the latest scientific knowledge on ''all identifiable effects on public health or welfare'' that may result from a pollutant's presence in the ambient air. *Id.* § 7408(a)(2). The scientific assessments constituting air quality criteria generally take the form of a ''criteria document,'' a rigorous review of all pertinent scientific studies and related information. The EPA also develops a ''staff paper'' to ''bridge the gap'' between the scientific review and the judgments the Administrator must make to set standards. *See Natural Resources Defense Council* v. *EPA* (''*NRDC*''), 902 F.2d 962, 967 (DC Cir. 1990). Both documents undergo extensive scientific peer-review as well as public notice and comment. *See e.g.,* 62 FR 38654/1–2.

For each NAAQS review, the Administrator must appoint ''an independent scientific review committee composed of seven members of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies,'' known as the Clean Air Scientific Advisory Committee (CASAC). Section 109(d)(2)(A). CASAC is charged with recommending revisions to the criteria document and NAAQS, and advising the Administrator on several issues, including areas in which additional knowledge is required to apprise the adequacy and basis of existing, new or revised NAAQS. Section 109(d)(2)(B), (C).

[6] Of course, if the area is designated nonattainment pursuant to section 107 of the Act because the air quality is not attaining the NAAQS, the PSD increments do not apply. Rather, reductions in emissions must be implemented to bring the area's air quality into attainment with the NAAQS, and, in the case of new sources, sufficient offsetting emissions reductions must be obtained. Sections 172(c) and 173(a) of the Act.

4. Ensure Economic Growth Consistent With Preservation of Existing Clean Air Resources

The third goal and purpose set forth in section 160 is to ''insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources.'' To some extent, this goal of the PSD program more specifically articulates the broader purpose of the CAA, described in section 101(b)(1) of the Act, to ''protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' 42 U.S.C. 7401(b)(1). Sections 160(3) and 101(b)(1) are similar in that both sections reflect the goal to simultaneously protect air quality and to foster economic growth. Thus, in interpreting the meaning of section 160(3) when used as a factor applicable under section 166(c), we also consider the broader purpose of the Act set forth in section 101(b)(1).

The first part of this goal of the PSD program set forth in section 160(3) (''to insure that economic growth will occur'') makes clear that the PSD program is not intended to stifle economic growth. However, the second part of this goal indicates that economic growth should ''occur in a manner that is consistent with the preservation of existing clean air resources.'' 42 U.S.C. 7470(3). Section 101(b)(1) indicates that these goals are not necessarily inconsistent because Congress sought to ''protect and enhance the Nation's air resources so as to promote the public health and welfare and the productive capacity of [the Nation's] population.'' Thus, when considered in light of the purpose of the Act set forth in section 101(b)(1), it is clear that section 160(3) establishes the goal of the PSD program to balance the promotion of economic growth and the protection of clean air resources.

Therefore, when applied as a guiding factor for the content of pollutant-specific PSD regulations under section 166(c), we construe section 160(3) to establish a balancing test between fostering economic growth and protecting: (1) AQRVs; (2) the public health and welfare from adverse effects, and (3) the air quality in parks and special areas. When EPA employs an area classification system in its section 166 regulations, all of these factors must be weighed in each type of area (Class I, Class II, and Class III). However, the weight given to each factor may be more or less depending on the area involved. For example, economic growth may be the most important factor in a Class III area, but our PSD regulations for such areas should offer some level of protection for existing clean air resources. In a Class I area, our PSD regulations should allow some level of economic growth, even though preservation of existing clean air resources may be the dominant value for these areas.

C. EPA's Authority To Fulfill Section 166 Requirements by Granting States Flexibility To Adopt Alternative Measures in Their SIPs

Under section 110(a)(1) of the Act, each State is required to submit a State Implementation Plan (SIP) which provides for implementation, maintenance, and enforcement of the primary and secondary NAAQS established by EPA. All areas are required to submit SIPs within certain timeframes, and those SIPs must include specified provisions identified under section 110(a)(2) of the Act. SIPs for nonattainment areas are required to include additional specified control requirements, as well as controls providing for attainment of any revised NAAQS and periodic reductions providing ''reasonable further progress'' in the interim (*see* section 172(c)). For attainment areas subject to the PSD program, section 161 of the Act requires that ''each applicable implementation plan shall contain emissions limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region * * * designated * * * as attainment or unclassifiable.'' Thus, we have interpreted sections 166 and 161 to collectively require that EPA promulgate a specific PSD regulatory program for each pollutant identified in section 166 (such as the existing NO_2 increments and associated regulations), and then to require the States to adopt that program as part of their SIPs.

We view the PSD program to be a growth management program that is intended to limit the deterioration of air quality beyond baseline levels that may be caused by the construction of major new and modified sources. We do not interpret the PSD provisions to authorize us to direct States in their SIPs to achieve reductions in emissions from existing sources. However, we recognize that the growth management goals of PSD may also be fulfilled when the States adopt controls on existing sources that would reduce emissions and allow growth from new sources and major modifications to existing sources without causing significant deterioration. Under the increment approach, we have previously recognized that States may choose to require reductions from existing sources in order to expand the increments and allow for more growth under the PSD program.[7] However, we have never required States to do so because, in the absence of an increment violation, we do not believe section 166 and other provisions in part C give us the legal authority to mandate such reductions for PSD purposes. Consistent with these authorities, in addition to requiring States to adopt a specific PSD program for NO_X promulgated under section 166 as part of their SIPs, we believe we could also give States the flexibility to develop their own programs that EPA could review to determine if the State program meets the requirements of section 166(c) and 166(d) of the Act. If a State adopts a program that meets the criteria of sections 166(c) and 166(d), we believe section 166 would give us the authority to allow the State to implement that program in lieu of any specific program (such as one that may include increments) that EPA might adopt under section 166. Thus, we think one option for fulfilling our obligation to promulgate pollutant-specific regulations for NO_X under section 166 would be to adopt regulations that establish a procedure for States to submit their own programs to satisfy section 166. These regulations would contain criteria that would guide EPA's evaluation of whether a State program contains ''other measures'' that are sufficient to satisfy the requirements of sections 166(c) and 166(d) and to operate in lieu of an EPA-promulgated program.

V. Health and Welfare Effects of NO_X

''Nitrogen oxides'' is the generic term for a group of highly reactive gases that contain nitrogen and oxygen in varying amounts. The high-temperature combustion of fossil fuels, primarily from electric utilities and mobile sources, is a major contributor to the formation of nitric oxide (NO) and NO_2. Most NO_X from combustion sources are emitted as NO (about 95 percent); the remainder are primarily NO_2. Emissions of NO are rapidly oxidized in the atmosphere to produce even more NO_2.[8]

Nitrogen oxides[9] play a major role in the formation of ozone and PM

[7] 43 FR 26380, 26381 (June 19, 1978) (''States can expand the available PSD increments by requiring emissions reductions from existing sources.'')

[8] Because NO is readily converted to NO_2 in the atmosphere, the emissions of NO_X reported by EPA assumes NO_X in the form of NO2. In predicting ambient impacts that may result from emissions of NO_X, all NO_X initially is assumed to be emitted from sources as NO_2. (40 CFR part 50 app W sec. 6.2.4.)

[9] Seven oxides of nitrogen are known to occur in the atmosphere: nitric oxide (NO), nitrogen dioxide

(nitrogen-bearing particles and acid aerosols), each with their own set of adverse health and welfare effects.[10] For example, nitrate particles contribute to visibility impairment and regional haze and nitrates are a major component of acidic deposition. Emissions of NO_X also contribute to nitrates in drinking water, nitrogen loadings to aquatic (eutrophication) and terrestrial (nitrification)[11] ecosystems, toxics, stratospheric ozone depletion, and global climate change.

Reduced nitrogen compounds, such as ammonia (NH_3) (derived largely from emissions from livestock waste as well as those associated with the application of fertilizer to the ground) and ammonium (NH_4¶), are also important to many of the public health and environmental impacts associated with atmospheric nitrogen compounds. It is important to recognize that some forms of NO_X are produced naturally (via lightning, soils, wildfires, stratospheric intrusion, and the oceans) and also can play a role in the cycling of nitrogen through the ecosystem. Such varied origins of nitrogen in the atmosphere add to the difficulty of determining the specific source contributing to the total nitrogen concentration and, therefore, make it difficult to design an emissions control strategy for reducing the nitrogen contribution in a particular area.

A. Scope of Effects EPA Proposes To Consider

In order to evaluate our pollutant-specific PSD regulations for NO_X under section 166(c), we must first define the scope of effects that are relevant to our analysis. Although emissions of NO_X contribute to a range of direct and indirect effects on health, welfare, and AQRVs, we believe our review should focus on those effects that were considered by EPA in the development of the NAAQS for NO_2.

EPA believes that this approach is appropriate because the need to develop PSD rules is tied to the existence of the NAAQS. As the court in *EDF* v. *EPA* acknowledged ''the ambient standards are the basic measure of air quality under the [Clean Air Act] and the controlling standards by no means *exclude any* value that is the subject of focus under the PSD provisions.'' 898 F.2d at 190 (emphasis in original). Thus, the health and welfare effects that were evaluated by EPA when it established the NAAQS should also be considered when EPA establishes regulations under section 166 to protect against significant deterioration of air quality from NO_X emissions.

This view is supported by the provisions of section 166 which make clear that EPA is to establish PSD regulations (including an increment, if appropriate) under this provision after the establishment of a NAAQS for the applicable pollutants. In 1971, EPA first established a single standard for NO_2 as both the primary and secondary NAAQS addressing NO_X. 36 FR 8186 (April 30, 1971). Congress then passed section 166 of the Act in 1977 and gave EPA 2 years to complete its study and promulgate PSD regulations for ''nitrogen oxides.'' 42 U.S.C. 7476(a). In addition, for pollutants for which a NAAQS had not been promulgated by August 7, 1977, Congress gave EPA 2 years from the promulgation of such standards to establish PSD regulation under section 166 of the Act. *Id.* The establishment of PSD regulations which may include increments must necessarily follow the NAAQS because the NAAQS provides the benchmark against which we are to judge ''significant deterioration'' of air quality.

Although we propose to use the range of effects considered in setting the NAAQS to define the bounds of our analysis, we are also mindful that the court in *EDF* v. *EPA* rejected use of the NAAQS as the ''sole basis'' for deriving the increment. 898 F.2d at 190. However, in this action, we propose to focus not simply on the level of the NAAQS as a legal standard, as we did in 1988, but to further consider the health and welfare effects that EPA evaluated to establish the NAAQS. Rather than considering those effects in relation to the standards set forth in section 109, we now evaluate those effects in relation to the factors in sections 166(c) and 160 of the Act. The court held that we could not rely solely on the NAAQS itself to establish increments because of the emphasis in sections 166(c) and 160 on special considerations—such as national wilderness areas—whose special values may be reflected in the NAAQS but are not necessarily the only factors that determine the level of the NAAQS. *See* 898 F.2d at 190. Thus, within the field of effects that EPA found relevant when establishing the NAAQS, we narrow our inquiry here to focus on the special considerations of PSD and those effects that may occur in some areas notwithstanding attainment of the NAAQS.

As noted above, both photochemical oxidants (ozone)[12] and PM[13] are formed in part by reactions of NO_X emissions with other pollutants in the atmosphere. Thus, the question arises whether the PSD regulations for NO_X must also address the ozone and PM impacts. Because section 166(a) directs EPA to separately promulgate pollutant-specific PSD regulations for photochemical oxidants (*i.e.*, ozone), we believe the duty to promulgate increments for ''nitrogen oxides'' does not include consideration of ozone.[14]

We believe that Congress did not intend for EPA to establish duplicative PSD regulations. Several pollutants are identified in section 166(a) for the promulgation of regulations to ''prevent the significant deterioration of air quality which would result from the emissions of such pollutants.'' In addition to ''nitrogen oxides,'' the statute lists ''photochemical oxidants'' and any pollutants for which NAAQS are later promulgated. Increments for PM_{10} are separately authorized in section 166(f).

In addition, we believe it would be unreasonable to establish pollutant-specific PSD regulations to protect against the effects of ozone without considering the other major precursor

(NO_2), nitrate (NO_3^-), nitrous oxide (N_2O), dinitrogen trioxide (N_2O_3), dinitrogen tetroxide (N_2O_4) and dinitrogen pentoxide (N_2O_5).

[10] The term ''welfare'' is defined in the Act to include, *inter alia*, ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate.'' Section 302(h).

[11] It should be noted that nitrification can be a beneficial process in many instances. Nitrification (a bacterially driven process that converts ammonium to nitrite) can occur productively in manure piles, during sewage processing, in soil, and in marine environments in the oxygenated water column above anaerobic sediments or within the surface of oxidized layers of sediments. Nitrification becomes adverse when it is accompanied by ''nitrogen saturation,'' a condition that can arise in terrestrial ecosystems from the long-term chronic effects of nitrogen deposition or loading, where nitrogen inputs into an ecosystem exceed the ability of plants and soil organisms to utilize it so that it begins to leach nitrite out of the soil into streams and other water bodies.

[12] Ozone is the oxidant found in the largest quantities in the atmosphere. The EPA promulgated NAAQS for photochemical oxidants in 1971. The chemical designation of the standard was changed in 1979 from ''photochemical oxidants'' to ozone. *See* 44 FR 8202 (February 8, 1979).

[13] Particulate matter (PM) is composed of directly emitted particles and secondarily formed particles. Secondary particulates are produced from gaseous pollutants, mainly NO_X, SO_2, ammonia, and some VOCs. Emissions of NO_X can result in the formation of particulate nitrates whose contribution to fine particles varies depending on geographic location and other criteria.

[14] In the 1988 final preamble adopting the NO_2 increments, we gave limited consideration to whether limiting increases of NO_X emissions would worsen ozone ambient concentrations, in response to comments raising this issue. 53 FR at 40668. We did not, however, attempt to set the NO_2 increments to address ozone public health and welfare impacts, nor do we believe that is required here, for the reasons stated above. Increments for ozone have not been established because of the technical difficulty associated with predicting ambient concentration changes resulting from a single stationary source. 61 FR 65764, 65776 (Dec. 13, 1996).

for ozone—volatile organic compounds. Any PSD regulation attempting to mitigate the ozone impacts from NO_X, notwithstanding the ozone NAAQS, would be unfounded without also addressing this significant component. Thus, we believe the contribution of NO_X to the formation of ozone should be considered only in the context of the establishment of pollutant-specific PSD regulations for ozone.

For similar reasons, we believe the duty to promulgate PSD regulations for ''nitrogen oxides'' under section 166 of the Act does not include a requirement to consider effects attributable to PM. Instead, Congress established increments for PM (then measured as total suspended particulate or TSP) and authorized EPA to replace the TSP increments with increments for PM_{10}. *See* CAA sections 163 and 166(f). Thus, we believe it would be inappropriate to promulgate pollutant-specific regulations for NO_X based on its transformation into PM. Regulations for NO_X that address PM effects in such a narrow manner (*i.e.*, nitrates [15] only) could potentially affect the stringency of the PM increments and considerations regarding the baseline concentration and baseline date. Additionally, like ozone, PM has several precursors, of which NO_X is only one. Any PSD strategy for PM should consider both direct PM emissions and all of the regulated precursors instead of placing disproportionate emphasis on only one component of the pollutant. In a separate notice, EPA intends to consider options for regulating precursors to $PM_{2.5}$.

B. Data Included in Review

Our review of the available scientific and technical information focuses primarily on the health and welfare information contained in the 1993 Criteria Document for NO_X and the 1995 OAQPS Staff Paper used for the periodic review of the NO_2 NAAQS completed in 1996. As described below, we have also considered information contained in more recent studies, particularly concerning the types of effects on ecosystems associated with atmospheric nitrogen deposition because the Act does place an emphasis on protection of air quality values and national parks and other special areas of national or regional interest.

The court's opinion in *EDF* v. *EPA* did not indicate what data set EPA should use in its review under the statutory criteria in sections 166(c) and 166(d). When EPA promulgated the NO_2 increments in 1988, the health and welfare information used for completing the periodic review of the NO_2 NAAQS (50 FR 25532, June 19, 1985) was contained in EPA's 1982 Criteria Document for NO_X. The same document represented the Agency's latest official documentation of health and welfare effects when the 1988 increments were challenged by Environmental Defense.

In general, we believe that it is appropriate to rely on the latest information used for promulgating or reviewing the NAAQS in order to evaluate the effectiveness of a set of increments or other PSD regulations for the same pollutant. This is because, under normal circumstances, the Act provides that EPA promulgate new PSD regulations under section 166, including new increments if appropriate, within 2 years from the promulgation of any NAAQS after 1977. 42 U.S.C. 7476(a). In such instances, the health and welfare information used for the setting of the NAAQS would also be ''current'' for purposes of establishing pollutant-specific PSD regulations.

The record of information used for the most recent periodic review of the NO_2 NAAQS includes the 1993 Criteria Document and 1995 Staff Paper. This information was used in 1996 to carry out the required periodic review of the NO_2 NAAQS and to conclude that the existing primary and secondary NO_2 NAAQS should be retained in the original form. 61 FR 52852 (October 8, 1996).

The most recent review of the NO_2 NAAQS contains information that was not part of the scope of the previous NAAQS review. Specifically, the 1993 Criteria Document and 1995 Staff Paper considered as part of the secondary standard review ''short- and long-term effects of nitrogen deposition on biological, physical and chemical components of ecosystems and the resulting effect of changes to these components on ecosystem structure and function as well as the traditional issue of visibility impairment, and materials damage.'' The expanded scope is particularly relevant to the types of effects that should be used to consider the effectiveness of the PSD increments.

While we believe that it is in keeping with congressional intent to rely in the ordinary case on only the information used in the most recent NAAQS review when establishing pollutant-specific PSD regulations under section 166, the situation we face here with NO_X is unique. Considerable time has passed since the 1996 review of the NO_2 NAAQS. Thus, in this unique case where we are reevaluating the NO_2 increment, we have also evaluated information contained in a number of more recent studies, published since completion of the last NAAQS review, to determine whether there have been significant advances in scientific and technical information. However, our review of the post-1996 scientific and technical information does not represent the level of effort appropriate for the development of a criteria document. Nevertheless, we believe our review was sufficient to determine that there has not been a substantial advance in scientific understanding of the ambient pollutant concentration levels at which adverse effects may occur as a result of NO_X emissions. Thus, we believe the research summarized in the most recent criteria document and Staff Paper remains valid and relevant for purposes of this review. Although the more recent data augment our understanding of the effects that may be caused by emissions of NO_X, they do not provide significant new information on the specific ambient air pollutant concentrations that may ultimately cause or contribute to these effects. Thus, the data concerning pollutant impacts associated with NO_X do not provide sufficient information from which it would be possible to conclude that the levels of the existing NO_2 increments are inadequate for purposes of the nationwide PSD program.

C. Analysis of Effects

This section contains a summary of the health and welfare effects reviewed by EPA as part of the reconsideration of the pollutant-specific PSD regulations for NO_X. These effects are within the scope of effects reviewed by EPA as part of its decision in 1996 to retain the existing primary and secondary NO_2 NAAQS. The objective of this technical review is to determine whether there is any compelling basis for proposing to modify the original NO_2 increments, which were based on the ''percentage-of-NAAQS'' approach, in order to ensure that we promulgate pollutant-specific PSD regulations for NO_X that adequately protect air quality values, parks and special areas, and health and welfare from adverse effects which may occur in some areas notwithstanding compliance with the NAAQS.

1. Health Effects

In 1996, EPA announced its conclusions that the current primary ambient air quality standard for NO_2, which is in the form of an annual standard for NO_2, ''appears to be both adequate and necessary to protect

[15] NO_2 may be transformed to nitrate particulates by means of chemical reactions in the atmosphere. Nitrate is a major constituent of atmospheric PM. Due to limited scientific literature addressing the health impacts of nitrates, exposure currently is analyzed as exposure to fine PM. (NAPAP, 1998.)

human health against both long- and short-term NO_2 exposures.'' 61 FR 52852. In reaching this conclusion, EPA considered a variety of acute (short-term) and chronic (long-term) health effects associated with exposure to NO_2 concentration.[16] Some of the most serious health effects reviewed by EPA were shown to occur at significantly higher exposure concentrations than are allowed by the NAAQS; other health effects, however, were found to occur at levels near the NAAQS. For our review purposes herein, only the adverse health effects that were found to occur at levels at or near the NAAQS are being considered.[17]

The health effects of most concern at ambient or near-ambient concentrations of NO_2 with short-term (*e.g.*, less than 3 hours) exposure include mild changes in airway responsiveness (airway constriction and narrowing) and decrease in pulmonary function. In addition, there is some evidence of increased respiratory illnesses among children associated with long-term, low-level exposure to NO_2. Each of these effects is summarized below.

While there is little evidence to show that healthy individuals experience increases in airway responsiveness when exposed to NO_2 concentrations below 1.0 ppm, clinical studies of asthmatics have reported evidence of increased airway narrowing at relatively low concentrations (mostly within the range of 0.2 to 0.3 ppm NO_2) at short-term exposures of less than 3 hours. However, such responses did not appear to cause airway inflammation and were fully reversible. In addition, the exposure concentrations studied exceeded the ambient levels typically monitored in areas that meet the annual NAAQS.

Small changes in pulmonary function have been observed in asthmatics at NO_2 concentrations generally ranging between 0.2 and 0.5 ppm NO_2 either at rest or following periods of exercise. Some findings of airway resistance occurred in mild asthmatics exposed to concentrations as low as 0.1 ppm NO_2 at rest. However, EPA concluded that this finding was not considered statistically significant. As above, the concentrations related to these effects exceed the levels typically monitored in areas meeting the NAAQS.

Increases in respiratory illnesses in children 5 to 12 years old resulting from exposure typically averaging over a 2-week period were reported in a number of epidemiological studies investigating effects of indoor exposure to NO_2 emitted from gas stoves. In these studies, NO_2 concentrations were estimated in terms of two-week average NO_2 exposures, where mean weekly exposure concentrations in bedrooms were predominantly between 0.008 and 0.065 ppm NO_2. The EPA noted various limitations with these studies, however, that made it extremely difficult to extrapolate the results in a manner that would yield quantitative estimates of health impacts for outdoor exposure to NO_2.

2. Welfare Effects

In its 1996 review of the NAAQS, EPA concluded that the ''available scientific and technical evidence * * * does not provide an adequate basis for setting a separate secondary standard for NO_2'' to address the welfare effects considered by EPA. 61 FR 52855. In addition, because of the multiple causes and regional character of many of the welfare effects that may be associated with NO_X emissions, the Administrator concluded that ''adoption of a nationally uniform secondary standard would not be an effective approach to addressing them.'' *Id.* Thus, EPA adopted a secondary standard for NO_2 that is the same as the primary standard.

However, as discussed earlier, the goals and purposes of the PSD program include protection of welfare, air quality values and areas of special national and regional interest (national parks, national wilderness areas, etc.). Nitrogen dioxide and other nitrogen compounds have been associated with a wide range of environmental effects. Thus, EPA has reviewed the information on welfare effects to determine whether there is any basis for modifying the existing NO_2 increments or to establish an alternative regulatory framework in order to provide additional protection notwithstanding attainment of the NAAQS in PSD areas.

a. Direct Welfare Effects

The periodic review of the NO_2 NAAQS, leading to EPA's final decision published in 1996, expanded the scope of coverage over the previous periodic review in that it included new environmental considerations, set forth by the Clean Air Act Amendments of 1990 (1990 Amendments), not included in the earlier review. In addition to the environmental features identified for protection by the secondary standard in the definition of public welfare (*see* section 302(h) of the Act), the 1990 Amendments expressed a new determination on the part of Congress to investigate through research ''short-term and long-term causes, effects, and trends of ecosystems damage from air pollutants * * *'' (*see* section 301(e) of the Act). Thus, in addition to the traditional issues of visibility impairment, and vegetation and materials damage, EPA's most recent periodic review of the NO_2 NAAQS addressed as part of the secondary standard review short- and long-term effects of nitrogen deposition on biological, physical and chemical components of ecosystems and the resulting effect of changes in these components on ecosystems structure and function.

Information contained in the 1993 Criteria Document, not available in the previous criteria document, indicated that single exposures to NO_2 for less than 24 hours can produce effects on growth, development, and reproduction of plants. However, the data did not suggest significant effects at or below the current ambient standards level. Instead, the observed effects generally occurred at concentrations greatly exceeding the ambient levels of NO_2 measured in the U.S. Some studies have shown that NO_2 in combination with other pollutants (*i.e.*, SO_2, ozone) can increase plant sensitivity, thus lowering concentration and time of exposure required to produce injury/growth effects. Again, however, the pollutant concentrations used in these experimental studies were well above those observed in the ambient air and at a frequency of occurrence not typically found in the U.S.

Nitrogen dioxide has been qualitatively associated with various adverse effects on materials. For example, exposure to NO_2 may contribute to: Enhancing the fading of dyes; diminishing the strength of fabrics, plastics and rubber products; assisting the corrosion of metals; and reducing the useful life of electric components, paints, and masonry. Compared to studies on sulfur oxides, however, there is limited information available quantifying the effects of NO_2 or other nitrogen compounds. The available evidence shows that it is difficult to distinguish a single causative agent for observed damage because many agents, together with a number of environmental stresses, act on the surface of materials over time.

Another potential direct effect of NO_2 is visibility impairment. NO_2 and other

[16] Based on the 1993 Criteria Document used for the decision in 1996 to retain the existing NO_2 NAAQS, EPA reaffirmed its previous conclusion that NO_2 is the only oxide of nitrogen sufficiently widespread and commonly found in ambient air at high enough concentrations to be a matter of public health concern. 60 FR 52878, October 11, 1995.

[17] For the purposes of this review, we are only summarizing some of the adverse health effects that were identified during EPA's periodic review of the NO_2 NAAQS in 1996. A detailed discussion of pertinent studies can be found in the 1993 Criteria Document and the 1995 Staff Paper.

pollutants can degrade the visual appearance of distant objects and reduce the range at which they can be distinguished from the background. NO_2 appears as a yellow to reddish-brown gas because it absorbs blue light, allowing red wavelengths to reach the eye.

The discoloration effect is most noticeable as local scale or ''reasonably attributed impairment,'' defined as a coherent, identifiable impairment, which can be seen as an optical entity (plume) against the background sky or a distant object. NO_2 does not normally contribute significantly to haze in remote areas, because of its high reactivity and relatively short lifetime in the atmosphere. Large-scale ''regional haze'' is more commonly associated with the light-scattering properties of PM, including nitrate PM formed by chemical reactions involving NO and NO_2 with other substances in the atmosphere, and is discussed below as an indirect effect of NO_2.

As reported in the 1995 Staff Paper (p. 87), the 1993 Criteria Document indicated that less than 0.1 ppm-km NO_2 is sufficient to produce a color shift that is distinguishable in carefully controlled, color matching tests. However, at concentrations below 0.01 ppm (approximately the concentration increase allowed by the Class II increment for NO_2), area-wide impacts of NO_2 absorption are not considered important.[18] In addition, some studies have shown that brownish discoloration can result from particles alone, thus making it difficult to determine a reliable relationship between ground-level concentrations of NO_2 at any given point and discoloration caused by particles which may also be in a source's plume. The 1995 Staff Paper noted that despite the known light-absorbing qualities of NO_2, ''there are relatively little data available for judging the actual importance of NO_2 to visual air quality.''

b. Indirect Welfare Effects

Various other welfare effects associated with NO_2 of environmental concern are indirect effects that NO_2 may have on ecosystems. These indirect effects occur following the transformation of ambient NO_2 to other nitrogen compounds by chemical reactions in the atmosphere and the transfer of these compounds from the atmosphere to other media through a process known as atmospheric nitrogen deposition (nitrogen deposition). Nitrogen deposition is the process by which nitrogen in airborne compounds is transferred to a variety of surfaces, *e.g.*, water, soil, vegetation, and other materials.

In terrestrial or agricultural systems, for example, that are nitrogen limited, some amount of nitrogen deposition can enhance growth of some forest species and crops. However, in areas where deposition occurs in excess of plant and microbial demand (also known as nitrogen saturation) the added nitrogen can disturb the nitrogen cycle, contributing to such adverse effects as increased plant susceptibility to some natural stresses and modification of interplant competition.

To have an effect on a particular ecosystem, nitrogen that has been released to the atmosphere must enter the ecosystem by either wet (rain or snow), dry (transfer of gases or particles), or occult (fog, mist or cloud) deposition. Nitrogen deposition occurs primarily as nitrates, which are formed in the atmosphere by the oxidation of NO and NO_2, or as ammonia, which is released by agricultural or soil microbial activity. When the nitrogen transfer process involves acids (*e.g.*, nitric acid) or acidifying compounds, the deposition process is referred to as ''acidic deposition.'' The adverse welfare effects associated with both types of nitrogen deposition are discussed in greater detail in the subsections below.

In the 1995 Staff Paper assessing the scientific and technical information contained in the 1993 Criteria Document, it was reported that little, if any, research had been initiated to determine what percentage of total (wet and dry) nitrogen deposition can be attributed to emissions of stationary and mobile sources of NO_X. The EPA did, however, estimate at that time that approximately one-third to one-half of the emissions of NO_X in the U.S. are removed by wet deposition, and it was generally assumed that dry deposition was equal to wet deposition for areas directly adjacent to emissions sources. The same assumption for wet deposition could not be made in receptor locations remote from the emissions sources.

More recently, at least one study has been published reporting on the relationship between emissions of NO_X and nitrate concentrations (and deposition) in the eastern U.S. The results of this study suggest linearity, specifically, that a reduction in NO_X emissions may reduce NO_3^- concentrations and acidic precipitation (wet deposition) with an efficiency ranging between 75 and 95 percent (Butler, 2003). The study was limited to the eastern U.S., and left unanswered the percentage contribution of total NO_X emissions to the total nitrogen deposition.

Studies such as this can provide potentially useful information to help estimate the relative benefits (in terms of anticipated reductions in NO_3^- deposition) resulting from different NO_X emissions control strategies. Similarly, such information could prove useful in evaluating the relationship between different levels of allowable ambient NO_2 concentration increases (*i.e.*, PSD increment levels) and corresponding total nitrogen deposition rates. Unfortunately, there are additional criteria that would need to be studied in order to be able to adequately evaluate this relationship and associated environmental effects.

To further complicate matters, dry deposition differs from wet deposition in that a sample taken at a particular location cannot be assumed to represent the rate of dry deposition of the area as a whole. Instead, dry deposition is driven by surface properties that are site-specific. Thus, a regionally representative average rate of dry deposition cannot be readily derived from information obtained from a single location (NOAA, 2004).

The following subsections summarize the various indirect effects of NO_2 on ecosystems, including terrestrial systems (*i.e.*, plant communities), wetlands, and aquatic systems. The EPA believes that the effects described are potentially relevant to an evaluation of the pollutant-specific PSD regulations for NO_X because these effects have been observed in areas of the country that are attaining the NAAQS.

(1) *Terrestrial ecosystems.* Soils are the largest pool of nitrogen in forest ecosystems, although such nitrogen is generally not available for plants until it has been mineralized by bacteria (Fenn, 1998). Another important source of nitrogen is atmospheric wet and dry deposition, which often has a fertilizing effect on terrestrial ecosystems, accelerating plant growth. While this effect can sometimes be considered beneficial, nitrogen deposition may also cause or contribute to significant adverse changes in terrestrial ecosystems, including soil acidification, increase in soil susceptibility to natural stresses, and alterations in plant species mix.

When excess nitrogen input causes soil acidification, it can alter the availability of plant nutrients (*i.e.*, calcium and magnesium) and expose tree roots to toxic levels of aluminum and manganese, thereby having an adverse effect on tree growth. It can also lead to the mobilization of aluminum from the soil as nitrates are leached

[18] ''Protecting Visibility: An EPA Report to Congress,'' OAQPS, October, 1979.

from the soil and transported to waterways, where the aluminum can exhibit toxic effects to aquatic organisms.[19]

Air pollution is not the sole cause of soil change; many studies have shown that acidic deposition is not a necessary condition for the presence of extremely acidic soils. High rates of acidification are occurring in less polluted regions of western U.S. because of internal soil processes, such as tree uptake of nitrate and nitrification associated with excessive nitrogen fixation. Although nitrogen deposition can accelerate the acidification of soils, the levels of nitrogen necessary to produce measurable soil acidification are quite high. The 1993 Criteria Document indicated that, at that time, nitrogen deposition had not been directly associated with the acidification of soils in the U.S. More recent information suggests that in parts of the Northeast, for example, acid deposition has resulted in the accumulation of sulfur and nitrogen in the soil beyond the levels that forests can use and retain, and has accelerated the leaching of base cations, such as calcium and magnesium, that help neutralize acid deposition. (Driscoll, 2001.) Some western forest areas may also be experiencing nitrogen saturation conditions, although the role of nitrogen deposition may vary from one location to another (Fenn, 1998, 2003).

Aside from the effects of soil acidification, some studies have shown that increased nitrogen deposition can alter tree susceptibility to frost damage, insect and disease attack, and plant community structure. However, other studies have not shown that similar results occur. In all, the studies evaluated in the 1993 Criteria Document which focused on the impact of excessive inputs of nitrogen in forest ecosystems showed mixed results. The long response time of trees to environmental stresses has made it difficult to fully understand how acid rain may affect trees. It is also difficult to isolate the possible effects of acid rain from other stresses resulting from other natural and anthropogenic origins. However, more recent studies appear to provide some evidence that acid deposition has caused the death of red spruce trees, particularly at higher elevations in the Northeast by decreasing cold tolerance, and may be in part responsible for the extensive loss of sugar maple in Pennsylvania. (Driscoll, 2001.)

Finally, in terrestrial systems in which the pre-existing balance is marked by a competition among species for the available nitrogen, additional nitrogen inputs, such as nitrogen deposition, may bring about an alteration of the species mix. That is, a displacement of one kind of vegetation (*e.g.*, plants, grasses) with another may occur. While the 1995 Staff Paper noted that there were no documented accounts of terrestrial ecosystems undergoing species shifts due to nitrogen deposition in the U.S., recent research provides some evidence suggesting that elevated nitrogen deposition can contribute to shifts of species compositions (*e.g.*, Allen, 1998; Bowman, 2000).

(2) *Wetlands.* Wetlands (*e.g.*, swamps, marshes, bogs) are lands where saturation with water is the dominant factor determining the nature of soil development and the types of plants and animal communities living in the soil and on its surface. These areas function as habitats for plant and wildlife (among other useful environmental purposes), including many rare and threatened plant species. Some of these plants adapt to systems low in nitrogen or with low nutrient levels. Long-term studies (greater than 3 years) of increased nitrogen loadings to wetland systems in European countries have reported that increased primary production of biomass can result in changes of interplant competition. The 1995 Staff Paper reported that, based on the evidence reviewed in the 1993 Criteria Document, ''the staff believes we can anticipate similar effects from atmospheric nitrogen deposition in the United States * * *.'' However, EPA found no documentation providing sufficient evidence that such species changes have occurred or were occurring at the time in the U.S.

(3) *Aquatic ecosystems.* Nitrogen deposition may adversely affect aquatic ecosystems as a result of either acidification or eutrophication. Both processes can cause a reduction in water quality that makes the body of water unsuitable for many aquatic organisms. The basic concern is that deposition of nitrates alters the availability of nitrogen to organisms (*e.g.*, algae, fish, submerged vegetation, and amphibian and aquatic vertebrate communities) and causes changes in species composition within the system. In addition, the affected water can become unfit for human consumption.

The 1995 Staff Paper indicated that growing evidence supported the concern that the impact of nitrogen deposition on sensitive aquatic systems ''may be significant.'' Atmospheric nitrogen can enter lakes and streams either as direct deposition to the water surfaces or as nitrogen deposition to the watershed of which they are a part. In some cases, nitrate may be temporarily stored in snow packs from which it is subsequently released in more concentrated form in snow melt. In other cases, nitrogen deposited to the watershed may subsequently be routed through plants and soil microorganisms and transformed into other inorganic or organic nitrogen species which, when they reach the water system, are only indirectly related to the original deposition. In addition to the contribution of nitrogen from anthropogenic sources, recent studies suggest that nitrogen released from the weathering of nitrogen-bearing bedrock, not commonly considered in the biogeochemical cycling of nitrogen, may contribute a ''surprisingly large amount'' of nitrate to natural waters. (Dahlgreen, 2002.)

Acidification may occur in two ways: Chronic (long-term) acidification and episodic (short-term or seasonal) acidification. Episodic acidification is more likely to be the primary problem in most situations, with chronic acidification occurring mainly where excessive nitrogen saturation exists. (NAPAP, 1998.) The main concern with acidification of aquatic ecosystems is associated with freshwater systems. Acidification impairs the water quality of lakes and streams by lowering the pH levels, decreasing acid-neutralizing capacity, and increasing aluminum concentrations. (Driscoll, 2001.) High levels of aluminum, as well as increased acidity, create unfit conditions for habitat and cause the water to be unfit for human consumption. Acid deposition may also increase the conversion of mercury to organic (methyl) mercury in lakes where it is absorbed by aquatic organisms and leads to increasing concentrations in the food chain. Human consumption of fish containing high levels of methylmercury can lead to problems with the central nervous system.

Regions of North America differ in their sensitivity to acidic deposition and in the amount of acidic deposition they receive. Some parts of the eastern U.S. are highly sensitive and chronically or episodically receive damaging concentrations of acidic deposition. For example, a recent report indicates that 41 percent of lakes in the Adirondack Mountain region of New York and 15

[19] Aluminum from soil seldom appears in aquatic systems because natural aluminum minerals are insoluble in the normal pH range of natural waters. However, the term ''aluminum mobilization'' refers to the the conversion of aluminum in acidic soils into dissolved forms and its transport, as runoff or subsurface flow, to water systems. Mobilized aluminum can then alter the acid/base property of natural water systems (Wang, 2004).

percent of lakes in New England show evidence of either chronic or episodic acidification, or both. (Driscoll, 2001.) Other sensitive regions, such as the western U.S., are unlikely to suffer adverse chronic effects but may experience acidic conditions more on an episodic basis. Certain high-elevation western lakes, in particular, are subject to episodes of acidic deposition.

Eutrophication generally is a natural process by which aquatic systems are enriched with the nutrients, including nitrogen, that are presently limiting for primary production in that system. However, this process can be accelerated by increased nutrient input resulting from anthropogenic sources, *e.g.*, agricultural runoff, urban runoff, leaking septic systems, sewage discharge. Studies have also shown that nitrogen deposition may directly and indirectly play a role in accelerated eutrophication. When nitrogen is a limiting nutrient, input from various origins can make a water system prone to eutrophication, with impacts ranging from the increased turbidity and floating mats of macro algae shading out beneficial submersed aquatic vegetation habitat, to the exacerbation of noxious algae blooms, to the creation of low or no-oxygen conditions which negatively affect fish populations. The National Park Service (NPS) has reported that loadings of total nitrogen deposition (wet and dry) have caused changes in aquatic chemistry and biota in the Rocky Mountain National Park's high elevation ecosystems. (U.S. Department of the Interior, 2002.) In the same report, the NPS noted that increasing trends in nitrogen deposition at many parks in the western U.S. result from both nitrate and ammonium.

The key to creating a linkage between levels of nitrogen deposition and the eutrophication of aquatic systems is to demonstrate that the productivity of the system is limited by nitrogen availability, and to show that nitrogen deposition is a major source of nitrogen to the system. Thus, while it appears that nitrogen inputs to aquatic systems may be of general concern for eutrophic conditions, the significance of nitrogen input will vary from site to site. (1995 Staff Paper at 77.)

A 1993 National Research Council report identifying eutrophication as the most serious pollution problem facing the estuarine waters of the U.S. was reported in an EPA document issued in 1997, entitled ''Nitrogen Oxides: Impacts on Public Health and the Environment'' (p. 79). Nitrogen input is a major concern because nitrogen is the limiting nutrient for algae growth in many estuaries and coastal water systems. In contrast to the eutrophication concern, acidification typically is not a concern, because estuaries and coastal waters receive substantial amount of weathered material from terrestrial ecosystems and from exchange with sea water.

Estimation of the contribution of atmospheric nitrogen deposition to the eutrophication problem can be difficult because of the various direct anthropogenic sources of nitrogen, including agricultural runoff and sewage. Some studies have shown that nitrogen deposited from the atmosphere can be a significant portion of the total nitrogen loadings in specific locations, such as the Chesapeake Bay—the largest of the 130 estuaries in the U.S. It has been estimated that the proportion of the total nitrate load to the Bay attributable to nitrogen deposition ranges from 10 to 45 percent (NAPAP, 1998).

In most freshwater systems, including lakes and streams, phosphorus, not nitrogen, is the limiting nutrient. Thus, eutrophication by nitrogen inputs will only be a concern in lakes that are chronically nitrogen limited and have a substantial total phosphorus concentration. This condition is common only in lakes that have received excessive inputs of anthropogenic phosphorous, or in rare cases, have high concentrations of natural phosphorus. In the former case, the primary dysfunction of the lakes is an excess supply of phosphorus, and controlling nitrogen deposition would be an ineffective method of gaining water quality improvement. In the latter case, nitrogen deposition can measurably increase biomass and thus contribute to eutrophication in lakes with high concentrations of natural phosphorus. Other lakes, including some high-elevation lakes in the Rocky Mountains and Sierra Nevada, are very low in both phosphorus and nitrogen; addition of nitrogen can increase biomass and contribute to eutrophication in these lakes also.

(4) *Visibility impairment (Regional Haze).* Nitrate particulates, formed as a result of chemical reactions involving NO and NO_2 with other substances in the atmosphere, are considered to be more responsible for visibility impairment than NO_2 directly. Nitrate particles are observed as both fine and coarse particles. The fine particles that can remain airborne for considerable periods of time and may be transported long distances from the NO_X source. These fine particles impair visibility by scattering or absorbing light.

Generally, the two largest contributors to visibility impairment are sulfates and carbon-based particles. The major cause of visibility impairment in the East is sulfate. Nitrates account for only 7 to 16 percent of the light extinction in the East, but are responsible for between 4 and 45 percent of the light extinction in the West. While NO_2, a precursor of nitrate particulates, is minimized through the control of NO_X emissions from new and modified major stationary sources under the PSD requirements for NO_X, EPA believes that the problems associated with nitrate particulates, along with other forms of PM, are best addressed through programs focusing on strategies to effectively reduce PM. For example, EPA's Regional Haze program, established pursuant to section 169B of the Act, specifically requires reductions in NO_X emissions from certain existing stationary sources. The EPA also recognized the significance of NO_X emissions as an important precursor of $PM_{2.5}$ under its June 2004 proposal for CAIR. Accordingly, EPA proposed to assign emission reduction requirements to States that significantly contribute to nonattainment in a downwind State with respect to the $PM_{2.5}$ NAAQS. Both the Regional Haze program and the proposed CAIR are discussed in greater detail later in this preamble.

VI. Proposed Actions

As noted above, section 166 directs EPA to conduct a study and promulgate regulations to prevent significant deterioration of air quality due to NO_X emissions. Those regulations may include increments or ''other measures'' to prevent significant deterioration of air quality, so long as those other measures are consistent with the requirements of sections 166(c) and 166(d) of the Act. Accordingly, we are today proposing three options for addressing the statutory requirement for preventing significant deterioration of air quality due to emissions of NO_X which we believe satisfy the specific criteria described herein. The first option involves retaining the existing NO_2 increments, and the other two options qualify as ''other measures'' and include using (1) a cap and trade program in lieu of increments, and (2) a State planning option providing States with some flexibility for developing ''other measures'' to adequately prevent significant deterioration of air quality due to emissions of NO_X.

A. Retain Existing Increment System for NO_X

1. How Existing Characteristics of the Regulatory Scheme Fulfill Statutory Criteria

As discussed above, EPA does not interpret the Court's decision to require that EPA reevaluate the entire regulatory framework of the PSD regulations for NO_X established in 1988. Thus, for the increment system for NO_X set forth in this proposal, EPA is only reevaluating the level, time period, and pollutant form (NO_2) used in establishing increments in its PSD regulations for NO_X.

Because section 166 of the Act requires that EPA establish PSD regulations for NO_X that satisfy the criteria set forth in subsections (c) and (d), EPA interprets section 166 to require that its PSD regulations for a particular pollutant must, as a whole, satisfy the criteria in section 166. However, in this unusual circumstance where EPA is reevaluating specific aspects of a larger body of PSD regulations under an order of a court, EPA does not necessarily consider all of the criteria in section 166(c) of the Act to be relevant to the specific issues addressed by the court regarding the characteristics of an increment. The EPA believes that many of the factors applicable under section 166(c) are fulfilled by elements of the increment and area classification regulatory framework that were not controverted in *EDF* v. *EPA*. Thus, EPA has not conducted an extensive review of the existing increments based on those factors that are sufficiently satisfied by the overall increment and area classification system that was not controverted.

However, we believe it is helpful to explain how several aspects of the overall system of regulations EPA adopted for NO_X under section 166 satisfy the factors applicable under section 166(c). We believe our obligations under section 166(c) of the Act are satisfied when the entire body of pollutant-specific PSD regulations for NO_X (including the level and other characteristics of any increment) as a whole meet the factors applicable under 166(c) of the Act.

a. Increment System

An increment is the maximum allowable increase in air pollution that is allowed to occur above baseline concentrations. The baseline concentration in a particular area is the ambient pollutant concentration in an area at the time the first complete PSD permit application is submitted (*i.e.*, the baseline date) by a new major stationary source or a major modification for a source affecting that area. By establishing the maximum allowable level of increase in air pollution in a particular area, an increment defines ''significant deterioration.'' Once a proposed new major stationary source or major modification establishes the baseline date in a particular area, the new emissions from that source consume increment in that area, as do any subsequent emissions increases that occur from any source in the area. When the increment is totally consumed, additional PSD permits cannot be issued until sufficient amounts of the increment are ''freed up'' via emissions reductions that may be required by the permitting authority. Moreover, the air quality in a region cannot deteriorate to a level in excess of the applicable NAAQS, even if all the increment has not been consumed. Thus, areas experiencing air quality levels near the level allowed by the NAAQS may not be able to use the full amount of pollutant concentration increase allowed by the increment.

Congress did not require EPA to utilize increments in its PSD regulations for NO_X promulgated under section 166 but gave EPA the discretion to employ increments if appropriate to meet the criteria and goals and purposes set forth in sections 166 and 160. 42 U.S.C. 7474(d); *EDF* v. *EPA*, 898 F.2d at 185 (''Congress contemplated that EPA might use increments''). In adopting its PSD regulations for NO_X in 1988, EPA elected to base those regulations on the concept of an increment because increments represented the most workable option at the time for establishing a numerical measure against which permit applications could be evaluated. In addition, EPA recognized that in using the increment approach, it would be able to take advantage of expertise that State and local agencies had already developed in implementing an increment-based program for PM and SO_2. 53 FR 40657.

Thus, EPA concluded that an increment-based program was the best way to fulfill its obligation under section 166(c) to provide ''specific numerical measures against which permit applications may be evaluated.'' Under section 165(a)(3) of the Act, a permit applicant must demonstrate that emissions from the proposed construction and operation of a facility ''will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant.'' 42 U.S.C. 7475(a)(3). An increment is a quantitative value that establishes the ''maximum allowable increase'' for a particular pollutant. It functions, therefore, as a specific numerical measure that can be used to evaluate whether an applicant's proposed project will cause or contribute to air pollution in excess of allowable levels. Since this aspect of EPA's regulations was not controverted in *EDF* v. *EPA*, we are not proposing to revisit this criterion in our analysis of the characteristics of the increments below.

In addition, EPA also determined that using increments in the PSD regulations for NO_X also satisfied the second factor in section 166(c) by providing ''a framework for stimulating improved control technology.'' In 1988, we concluded that increments establish an incentive to apply more stringent control technologies in order to avoid violating the increment. 53 FR 40657. Given that the PSD increment level is consumed over time, the level of control required to avoid causing exceedance of the increment becomes more stringent. Consequently, new or modified sources in such localities may have to install control technologies more effective than those normally considered representative of BACT in order to comply with the increment, or to preserve some portion of the increment for future economic growth. The control technologies utilized in these areas will become the basis of BACT determinations elsewhere, as the technologies become more commonplace and the costs tend to fall. *See also* S. Rep. 95–127 at 18, 30 (3 LH at 1392, 1404) (''the incremental ceiling should serve as an incentive to technology, as a potential source may wish to push the frontiers of technology in a particular case to obtain greater productive capacity within the limits of the increments''). We believe the existing regulatory framework, which was not controverted in *EPA* v. *EDF*, satisfies this criterion and do not propose to reconsider it under the increment option of this proposal.

b. Area Classifications

In 1988, EPA chose to establish NO_2 increments of different stringency based on the three-tiered classification scheme established by Congress. 53 FR 40657. Under this scheme, Class I areas are generally national parks, wilderness areas, and other special areas that require an extra level of protection. The most stringent increment is imposed in Class I areas. Class III areas, which have the least stringent increment level, are those areas in where a State wishes to permit a higher level of industrial development. Areas that are not

especially sensitive or that do not wish to allow for a higher level of industrial growth are classified as Class II. When Congress established this three-tiered scheme for SO_2 and PM, it intended that Class II areas be subject to an increment that allows ''moderately large increases over existing pollution.'' H.R. Rep. 95–294, 4 Legislative History at 2609. The Petitioner's in *EDF* v. *EPA* did not contest EPA's decision to employ this same classification scheme for NO_X. We believe that adopting such an area classification scheme for NO_X with a different level of increment for each type of area helps to fulfill two of the factors applicable under section 166(c) of the Act.

First, Class I areas generally cover the kinds of parks and special areas covered by section 160(2) of the Act. Thus, establishing the lowest level of increment in these areas helps fulfill EPA's obligation to establish regulations for NO_X that ''preserve, protect, and enhance the air quality'' in these areas.

With the air quality in Class I areas subject to the greatest protection, this scheme then provides two additional area classifications with higher increment levels to help satisfy the goal in section 160(3) of the Act that EPA ''insure that economic growth will occur in a manner consistent with preservation of clean air resources.'' In those areas where clean air resources may not require as much protection, more growth is allowed. By employing an intermediate level (Class II areas) and higher level (Class III areas), this classification scheme helps ensure that growth can occur where it is needed (Class III areas) without putting as much pressure on existing clean air resources in other areas where some growth is still desired (Class II areas).

By redesignating an existing Class II area to Class III, States may accommodate economic growth and air quality in areas where the Class II increment is too stringent to allow the siting of new or modified sources. The procedures specified by the Act for such a redesignation require a commitment of the State government to the creation of such an area, extensive public review, participation in the State Implementations Plan (SIP) area redesignation process, and a finding that the redesignation will not result in the applicable increment being exceeded in a nearby Class I or Class II area. *See* 42 U.S.C. 7474(a)–(b) (Section 164(a)–(b)). Our 1988 analysis, 53 FR at 3702–05 and the subsequent issuance of PSD permits for major new and modified sources of NO_X since that time,[20] tend to confirm that, with the existing increment levels, the three-tiered classification system has allowed for economic growth, consistent with the preservation of clean air resources.

Because it helps fulfill these goals and purposes and was not controverted in *EDF* v. *EPA*, we do not propose to revisit our decision to employ this area classification scheme for NO_X. However, we do not believe that this framework alone completely satisfies the factors applicable under section 166(c) of the Act. The increment level that is employed for each class of area is also relevant to an evaluation of whether the area classification scheme achieves the competing goals of the PSD program. Thus, we propose to further consider the goals of protecting parks and special areas and ensuring economic growth consistent with the preservation of clean air resources as we reevaluate the increment levels at the direction of the Court.

c. Permitting Procedures

The framework of our existing PSD regulations employs the preconstruction permitting system and procedures required under section 165 of the Act. 42 U.S.C. 7475. These requirements are generally reflected in sections 51.166 and 52.21 of EPA's PSD regulations in Title 40 of the Code of Federal Regulations. These permitting and review procedures, which we interpret to apply to construction on any new or modified major source, fulfill several of the factors applicable under section 166(c) of the Act for EPA's PSD regulations for NO_X. Two of the goals and purposes of the PSD program, in particular, seem especially amenable to being fulfilled through a case-by-base permit review.

Under section 160(5) of the Act, as incorporated in section 166(c), EPA should develop PSD regulations for NO_X that ''assure that any decision to permit increased air pollution in any area to which this part applies is made only after careful evaluation of all the consequences of such a decision, and after adequate procedural opportunities for informed public participation in the decisionmaking process.'' The permit evaluation and review procedures reflected in the existing PSD regulations, which are applicable to sources of NO_X, call for a careful evaluation that involves a source impact analysis (sections 51.166(k) and 52.21(k)), air quality analysis (sections 51.166(m) and 52.21(m)), additional impacts analysis (sections 51.166(o) and 52.21(o)), and an analysis of impacts on Class I areas (sections 51.166(p) and 52.21(p)). In addition, the procedures incorporated in sections 51.166(q) and 52.21(q) ensure public participation in the decisionmaking process. Thus, we believe the existing framework for the PSD regulations for NO_X fulfills the goals and purposes set forth in section 160(5) by employing the permit review procedures described above. Because the goal in section 160(5) is satisfied by the existing regulatory framework that was not controverted in *EDF* v. *EPA*, we do not propose to further consider this factor in our evaluation of the characteristics of the NO_2 increment.

In addition, we believe the permit review component of the framework also fulfills the goals and purposes set forth in section 160(4) of the Act. As incorporated through section 166(c) of the Act, section 160(4) calls on EPA to establish PSD regulations that prevent one State from interfering with the PSD program for any other State. This goal is also one that we believe can be best implemented through individual permit review when we use an increment system. In the course of such a review, a source must demonstrate that it does not cause or contribute to an increment violation in any area subject to part C of the Act. *See* section 165(a)(3)(A). These areas include areas in other States. Thus, we do not propose to further consider the goal in section 160(4) in our reevaluation of the characteristics of the NO_2 increments. We believe the existing permit evaluation procedures incorporated into the framework of our existing PSD regulations for NO_X operate to satisfy the goal in section 160(4) and do not require further analysis for the increment option.

d. Additional Impacts Analysis

One particular aspect of the permit review procedures described above is worthy of more particular attention because it also helps fulfill the substantive criteria and goals and purposes in section 166(c) and section 160. Where applicable, the additional impact analysis required under section 165(e)(3)(B) and the PSD regulations (§§ 51.166(o), 52.21(o)) provides a case-by-case review of the potential harm that a pollutant may cause to certain resources in all classes of areas. The following type of analysis is required to be conducted by the permit applicant:

(1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result

[20] EPA does not formally track the issuance of PSD permits across the country, but EPA's Regional Offices have confirmed that various PSD permits for sources of NO_X have been issued by many of the States in their respective jurisdictions.

of the source or modification, and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

Section 165(e)(3)(B). The Additional Impacts Analysis requirements are the most relevant in this rulemaking action to Class II and Class III areas which are not subject to the additional FLM review that applies in Class I areas.

e. Federal Land Manager Review

In the 1988 rulemaking addressing PSD for NO_X, EPA extended the FLM review procedures set forth in sections 51.166(p) and 52.21(p) to cover NO_2. 53 FR at 3704. These FLM review procedures were established based on section 165(d), and they were originally applied only in the context of the statutory increments for PM and SO_2. However, because they also address many of the factors applicable under section 166(c) of the Act, EPA also applied them to NO_X through regulation. Under an increment approach, we view the FLM review procedures as an additional measure that helps to satisfy the factors in sections 166(c) and 160(2) which require that EPA's PSD regulations for NO_X protect air quality values and parks and other special areas.

Section 165(d) creates a scheme under which the FLM has an affirmative responsibility to protect the AQRVs in Class I areas, and may object to or concur in the issuance of a PSD permit based on the impact or lack thereof on any affected AQRV that the FLM has identified, irrespective of whether the increment is exceeded. The exceedance of the increment determines only where the burden of proof lies.[21]

That is, if the proposed source will cause or contribute to a violation of a Class I increment, the permitting authority (State or EPA) shall not issue the permit unless the owner or operator demonstrates to the satisfaction of the FLM that there will be no adverse impact on AQRVs.[22] On the other hand, if the proposed source does not cause or contribute to a violation of a Class I increment, the FLM may only prevent issuance of the permit by demonstrating to the satisfaction of the permitting authority that the source will have an adverse impact on AQRVs. Section 165(d)(2)(C).

Incorporating these FLM procedures into the PSD regulations for NO_X helps to provide protection for parks and special areas (which are generally the Class I areas subject to this review) and air quality values (which are factors considered in the review). Section 166(d) on its face provides that measures other than increments may be promulgated to satisfy the duty under section 166.

Legislative history indicates that the FLM provisions of section 165(d) were intended to provide another layer of protection, beyond that provided by increments. The Senate committee report stated the following: ''A second test of protection is provided in specified Federal land areas (Class I areas), such as national parks and wilderness areas; these areas are also subjected to a review process based on the effect of pollution on the area's air quality related values.'' S. Rep. 95–127, at 17, 4 Legislative History at 1401.

f. Installation of Best Available Control Technology

Finally, another important element of the existing framework of PSD regulations applicable to NO_X emissions is the requirement that a permit applicant apply BACT when constructing a new source or making a major modification to an existing source. This requirement, based on section 165(a)(4) of the CAA, is included in EPA's PSD regulations and thus is also part of the regulatory framework for the Agency's pollutant-specific regulations for NO_X. 40 CFR 52.21(j); 40 CFR 51.166(j). Our existing regulations define ''best available control technology'' as ''an emission limitation * * * based on the maximum degree of reduction for each pollutant subject to regulation under the Act * * * which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source through application of production processes or available methods, systems, and techniques * * *.'' 40 CFR 52.21(b)(12); 40 CFR 52.166(b)(12). This pollutant control technology requirement is rigorous and in practice has required significant reductions in the pollutant emissions from new and modified sources. Thus, the BACT requirement is an additional measure in the framework of PSD regulations for NO_X that helps to satisfy the factors in sections 166(c), 160(1), and 160(2), which require that EPA's PSD regulations for NO_X protect air quality values, public health and welfare, and parks and other special areas.

2. Proposed Actions Regarding Characteristics of NO_2 Increments

We believe our review of the characteristics of the existing NO_2 increments should apply the following four factors applicable under section 166(c): (1) Protect air quality values; (2) protect public health and welfare from adverse effects from air pollution that occur even if in attainment; (3) protect air quality in parks and special areas; and (4) ensure economic growth consistent with preservation of clean air resources.[23] As noted earlier, we believe sections 166 and 160 direct that we balance the fourth factor (fostering economic growth) against the other three environmentally protective factors listed above. The other four factors identified in sections 166(c) and 160 of the Act do not appear to relate to the characteristics of the increments and are more appropriately considered when establishing the overall framework for PSD regulations. As described above, we believe that the framework adopted for the PSD regulations for NO_X satisfies the other factors. Since EPA is not reconsidering the entire framework in this proposed option, we do not believe that it is appropriate to further consider these other four factors.

a. Level of Increment

Consistent with the ''contingent safe harbor'' approach described above, our analysis of the appropriate levels for NO_2 increments begins by establishing a ''safe harbor'' increment level that is ''at least as effective as'' the increments established by Congress in section 163 of Act. 42 U.S.C. 7476(d). The court in *EDF* v. *EPA* recognized that this standard from section 166(d) of the Act is satisfied when we establish increments using the percentage-of-NAAQS approach that Congress used to establish the statutory increments. *See*

[21] In response to concerns that Class I increment would hinder growth in areas surrounding the Class I area, Class I increments were established as a means of determining where the burden of proof should lie for a demonstration of adverse effects on AQRVs. *See* Senate Debate, June 8, 1977 (3 LH at 725).

[22] Even if such a waiver of the Class I increment is allowed upon a finding of no adverse impact, the source must comply with such emissions limitations as may be necessary to ensure that the Class II increment for SO_2 or PM is not exceeded. Section 165(d)(2)(C)(iv). In 1988, EPA made this provision applicable to the PSD provisions for NO_X, with a cap of 25 $\mu g/m^3$ · the NO_2 Class II increment. 53 FR at 3704; 40 CFR 51.166(p)(4) and 52.21(p)(5).

[23] We paraphrase these factors here and in the sections that follow to facilitate the explanation of our reasoning. However, we recognize that the statutory language is broader than the shorthand we use here for convenience.

898 F.2d at 188. This approach involves using the same percentages that Congress used to calculate the PM and SO_2 increments from the NAAQS in effect at that time for these pollutants.

Because the only oxide of nitrogen for which we have a NAAQS is NO_2, we can only utilize the percentage of NAAQS approach to establish a ''safe harbor'' increment level for NO_2. We consider below whether we should establish increments for other forms of NO_X.

Because Congress used different percentages to calculate the Class I increments for PM and SO_2, we must determine which of these percentages is appropriate for the Class I NO_2 increment. For the reasons described in the 1988 rulemaking, we believe that it is appropriate for NO_2 increments to be derived using the same percentages that Congress used for SO_2 because NO_2 more closely resembles SO_2 than PM in its characteristics and sources. *See* 53 FR 3698, 3700 (February 8, 1988). Thus, we begin our analysis with a ''safe harbor'' increment level for each class of area that is set at the same percentage of the NO_2 NAAQS as the SO_2 increment is of the SO_2 NAAQS. Because the NO_2 increments have not changed since 1988, the percentage-of-NAAQS approach yields the same levels that we derived in 1988. Thus, using this approach, the ''safe harbor'' level for the Class I increment for NO_2 is 2.5 $\mu g/m^3$ (annual average), a level that is 2.5 percent of the NO_2 NAAQS. For the Class II increment for NO_2, the ''safe harbor'' level is 25 $\mu g/m^3$ · 25 percent of the NO_2 NAAQS. For the Class III increment for NO_2, the ''safe harbor'' level is 50 $\mu g/m^3$ · 50 percent of the NO_2 NAAQS.

Under our interpretation of the Act, these ''safe harbor'' levels establish the minimum stringency levels (or highest concentration levels) that we may use as the increments for NO_2. Our next step is to consider the factors applicable under section 166(c) and evaluate whether we need to revise the ''safe harbor'' level to satisfy these factors. Thus, under the increment option in this proposed rulemaking, to satisfy the requirements of section 166 of the Act, we believe we must evaluate whether it is necessary to adjust the NO_2 increments to levels more stringent than the ''safe harbor'' levels we derived using the percentage-of-NAAQS-approach. In this analysis of the level of each increment, we propose to apply the four factors applicable under section 166(c) that have not already been satisfied by the regulatory framework described above. Thus, we consider whether different increment levels are necessary to (1) protect air quality values; (2) protect public health and welfare from any effects occurring at levels below the NAAQS; (3) protect parks and special areas; and (4) ensure economic growth consistent with preservation of clean air resources.

(1) *An increment is an allowable marginal increase in air pollution.* Increments represent the maximum allowable level of increase in an area that is in attainment with the NAAQS or unclassifiable. Thus, increments are essentially a marginal level of increase in air pollution that is allowable for particular areas. The statutory increments are expressed as concentration rather than mass values. Thus, in applying the factors applicable under section 166(c), we believe section 166 of the Act requires that we analyze the impacts on air quality values, health and welfare, and parks and special areas that may occur as a result of some marginal increase in the concentration of air pollution in an area.

Using the ''contingent safe harbor'' approach, we first derive the highest level of marginal increase that may be permitted for each class of areas using the percentage-of-the-NAAQS approach. We must then consider whether this level of marginal increase satisfies the factors applicable under section 166(c). If the marginal increase in concentration allowed by the ''safe harbor'' level does not adequately protect against these effects and ensure economic growth consistent with preservation of clean air resources, then we must attempt to identify an alternative level of marginal increase that will satisfy the factors applicable under section 166(c).

As noted earlier, EPA does not interpret the PSD program to require it to set increments at a level where there will be no adverse effects from a marginal increase in air pollution in the amount of the increment. Congress did not anticipate that an increment would be a level of increase below which there would be no effects. An increment is the level that defines ''significant'' deterioration but does not prohibit all deterioration of air quality. The PSD program allows for some increase in effects when necessary to ensure that economic growth may continue to occur consistent with the preservation of clean air resources.

(2) *Increments are not intended to remedy existing effects but to maintain levels of air quality achieved by other programs.* Because an increment is an allowable level of increase, it does not function to reduce existing air pollution. The PSD program is intended to protect against significant deterioration of the air quality in attainment and unclassifiable areas from the construction and operation of new and modified sources of a particular size. Thus, the PSD program limits increases in emissions from these sources but does not seek to reduce emissions or ambient air pollutant concentrations to a particular level. The increments established by Congress were only intended to define the allowable levels of marginal increase in air pollution above a baseline concentration that are established in each area when the first major source applies for a PSD permit in that area. 42 U.S.C. 7479(4). As a result, we do not believe we are required to set increments at a level intended to alleviate existing adverse effects.

An increment is a marginal level of increase in air pollutant concentrations that functions to prevent significant deterioration of air quality. Thus, in evaluating the increment levels that are necessary to prevent significant deterioration of air quality, we consider that there are other programs authorized under the CAA that are operating (or will be operating) to reduce the adverse effects from existing air pollution sources. If we use an increment approach, these programs will serve the role of bringing existing emissions down, while increments included in our PSD regulations established under section 166 of the Act will be designed to limit increases in emissions from the construction of new major sources and the modification of existing ones.

For example, existing visibility problems are being addressed through implementation of the Regional Haze Program under sections 169A and 169B of part C.[24] Section 169A establishes as a national goal ''the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade pollution.'' 42 U.S.C. 7491(a). In the 1990 Amendments, Congress added section 169B, which called for additional research into the visibility problem and directed EPA to issue regional haze rules taking into account such studies and reports within 18

[24] When the visibility provisions were enacted, the House committee report specifically recognized that the ''visibility problem is caused primarily by emission into the atmosphere of sulfur dioxide, oxides of nitrogen, and particulate matter * * *'' H.R. Rep. 95–294, at 204, reprinted in 4 Legislative History at 2671. NO_X may result in visibility impairment either locally (a brown plume effect) or contributing to regional haze, which has been recognized as primarily a fine particle phenomenon. 1995 Staff Paper at 89. For the reasons discussed earlier, we do not believe we need to consider PM effects in this reevaluation of the NO_2 increments.

months after receipt of a final report from the Grand Canyon Transport Visibility Commission. The EPA promulgated these regulations on July 1, 1999. 64 FR 35714 (''Regional Haze rule''). The main components of this rule require States to: (1) Submit SIPs that provide for ''reasonable progress'' toward achieving ''natural visibility conditions'' in Class I areas; (2) provide for an improvement in visibility in the 20 percent most impaired days; (3) ensure no degradation in visibility occurs on the 20 percent clearest days; and (4) determine the annual rate of visibility improvement that would lead to ''natural visibility'' conditions in 60 years.

At the time that the Regional Haze Program was established, a Congressional committee recognized that the PSD program was not necessarily created to alleviate existing adverse effects resulting from contributions by existing sources. When it was writing section 169A of the Act at the same time that it established the PSD program, the House recorded the following observations in a committee report:

> [T]he committee recognizes that one mechanism which has been suggested for protecting these areas, the mandatory Class I increments of new section 160 ('Prevention of Significant Deterioration') do not protect adequately visibility in Class I areas. First, inadequately controlled, *existing* gross emitters such as the Four Corners plant would not be affected by the significant deterioration provisions of the bill. Their emissions are part of the baseline, and would not be required to be reduced by new section 160 of the act.

H. Rep. 95–294, at 205, 4 Legis. History at 2672 (emphasis added). This statement indicates that protection of air quality values under section 166(c) is provided when an increment limits significant deterioration of air quality, but does not require an increment that eliminates all adverse impacts on air quality values, such as visibility, that may be caused by existing sources.

In addition, in the 1990 Amendments, Congress enacted title IV to address the problem of acid deposition. We believe this supports an interpretation that the PSD measures called for in section 166 need not eliminate acid deposition impacts that may be caused by existing sources. Rather, under an increment approach, our view is that the PSD program is intended to focus on establishing a marginal level of increase in emissions that will prevent significant air quality deterioration and, in conjunction with AQRVs identified by the FLM, provide protection against increases in adverse effects resulting from acid deposition.

Reduction of NO_X emissions from existing sources is also required under EPA's NO_X SIP Call and the proposed CAIR. Under both programs, emissions of NO_X are regulated as a precursor of either ozone or fine PM, or both. The programs are based on State obligations to address interstate transport of pollution under section 110(a)(2)(D) of the Act, which is discussed in more detail above in the section on our legal authority.

The NO_X SIP Call requires the affected States and the District of Columbia to submit SIP revisions that reduce NO_X emissions by specified amounts by a specified date. The EPA has projected that over 1 million tons of NO_X per ozone season will be reduced as a result of this particular program.

As proposed, the CAIR requires that emissions reductions be implemented in two phases, with the first phase in 2010 and the second phase in 2015. The EPA's estimates of the NO_X emissions reductions that would result from the CAIR proposal are 1.5 million tons by 2010 and an additional 0.3 million tons by 2015 (for a total of 1.8 million tons).

In areas where the PSD baseline has not yet been established, the emissions reductions achieved by these programs may result in lower baselines being established when triggering does occur. Then, the increments we are reevaluating in this rulemaking will begin to operate as an allowable level of marginal increase that prevents the significant deterioration of air quality in attainment areas. This approach is consistent with Congressional intent that the baseline concentration, representing the air quality in an attainment area subject to PSD, be established on the date of the first application for a permit by a PSD source affecting that area. 42 U.S.C. 7479(4). *See also, Alabama Power* v. *Castle,* 606 F.2d 1068, 1088–89 (D.C. Cir. 1979).

(3) *Increments should be uniform across the nation.* When we use the framework of an area classification system in PSD regulations for a particular pollutant, we believe that we must establish a single increment for each class of area such that this allowable level of increase applies uniformly to all areas in the nation with that particular classification. This is necessary to ensure equitable treatment by allowing the same level of economic growth for all regions of the country that a State elects to classify in a particular manner. We believe that Congress intended for the PSD program to allow air quality in each area of the country with the same classification to change by the same amount in order to avoid a disproportionate impact on growth that might disadvantage some communities. The following statement from the legislative history of the PSD program supports our interpretation:

> Some suggestions were made that the pollution increments should be calculated as a function of existing levels of pollution in each area. But the inequities inherent in such an approach are readily evident * * *. The committee's approach—increments calculated as a percentage of the national standard—eliminates those inequities. All areas of the same classification would be allowed the same absolute increase in pollution, regardless of existing levels of pollution.

H. Rep. 95–294, at 153, 4 Legis. History at 2620. *See also* S. Rep. 95–127, at 30, 3 Legislative History at 1404 (''These increments are the same for all nondeterioration areas, thus providing equity for all areas.''). This indicates that Congress did not intend to impose more stringent restrictions under the PSD program on particular areas of the country based on their current levels of air pollution, unless, of course, the current levels are so near the NAAQS that the full amount of incremental change cannot be allowed.

Instead, Congress generally left it up to the States to determine the areas where a greater or lesser level of protection was needed. Although Congress established certain parks and wilderness areas as mandatory Class I areas, it classified all other areas as Class II areas and gave the States the power to reclassify these areas to Class I or Class III to provide for greater protection of air quality or allow more growth, depending on the values of the State and the community in that area. This allows the States to make their own choices about which areas require more protection of air quality and which areas should be allowed more growth consistent with the protection of air quality. *See* H.R. Rep. 95–294, at 153–154, 4 Legislative History at 2620–2621.

We believe that the same equitable considerations are applicable when we establish PSD regulations containing increments and area classifications under section 166 of the Act. Since Congress did not intend for the increments it established to impose a disproportionate impact on particular areas, we do not believe it intended to grant EPA the power to do so under section 166 of the Act. Thus, to treat all areas of the country in an equitable manner, it is necessary for us to establish uniform increments for NO_2 that establish the same maximum allowable increase for each class of area.

However, we must also weigh these equitable considerations against the unique variability in ecosystem effects that may result from NO_X emissions. In our review of the NO_2 NAAQS, we observed that ''a great degree of diversity exists among ecosystem types, as well as in the mechanism by which these systems assimilate nitrogen inputs.'' 60 FR at 52881. As a result, we concluded, ''the relationship between nitrogen deposition rates and their potential environmental impact is to a large degree site or regionally-specific and may vary considerably over broader geographical areas or from one system to another because of the amount, form, and timing of nitrogen deposition, forest type and status, soil types and status, the character of the receiving waterbodies, the history of land management and disturbances across the watersheds and regions, and exposure to other pollutants.'' *Id.* Consistent with these earlier conclusions, our more recent review in this rulemaking action of the studies on the effects of NO_X indicates that some levels of air pollution resulting from emissions of NO_X may contribute to adverse effects on welfare, air quality values, and parks in some areas of the country while not necessarily causing the same degree of effects on similar ecosystems and receptors in other areas of the country.

In light of the equitable considerations discussed earlier, we believe the best way to address the potential regional variability in the occurrence of effects attributable to NO_X emissions is to retain uniform national increments that accommodate growth and provide a basic degree of protection across the country, but to augment this with a procedural review that will require permitting authorities to consider adverse effects that may occur in more sensitive areas before the increment is consumed. This approach, which we believe is reflected in existing regulations, allows EPA to achieve the equity of setting a uniform increment level for all areas with a particular classification, while directing that permitting authorities conduct a more intensive, site-specific review to identify effects that might occur in a more sensitive area but not necessarily in all areas of the country with that classification.

This approach is embodied in the framework for the PSD regulations for NO_X that we adopted in 1988. As described above, each permit application is subject to an ''additional impacts'' analysis that allows the permitting authority to consider the sensitivity of a particular area. In Class I areas, the FLM review procedures provide further protection, notwithstanding the existence of a Class I increment, for the air quality values and the national parks and wilderness areas included in Class I areas.

As we noted earlier, we believe our ultimate obligation under section 166 of the Act is to establish a system of regulations containing provisions that collectively satisfy the content requirements in sections 166(c) and 166(d) of the Act. Thus, we think that Congress contemplated that we would consider the entire group of regulations when establishing particular aspects of those regulations. As a result, we believe it is appropriate and consistent with our statutory obligations to consider the protection provided by the additional impacts analysis and the FLM review of AQRVs when evaluating the level of NO_2 increments. Therefore, to achieve equity and protect against effects that are variable across regions of the country, we believe each of the NO_2 increments should be set at a level that reasonably protects air quality values, health and welfare, and parks and special areas across the country while also balancing the need to allow economic growth. To the extent necessary, the case-by-case additional impact analysis and FLM review should provide additional protection of air quality in particular areas that may be more sensitive to nitrogen loadings resulting from NO_X emissions.

Because of the equitable considerations and State prerogatives to classify areas described above, we do not believe that Congress intended to create a federally imposed system of regional or locally based measures or to authorize EPA to do so to address any variability in potential effects. Likewise, we do not believe it is permissible or appropriate for us to establish increments at a level that prevents any adverse impact on the most sensitive receptors in any part of the country. Although such a ''lowest common denominator'' approach might achieve uniformity across all areas, it would unduly restrict growth in those areas of the country where adverse effects may not occur at a higher level. In addition, as discussed further below, the available research on the effects of NO_X does not readily provide sufficient information to identify that level of increase below which significant effects would not occur to the most sensitive receptors in any area of the country.

Thus, EPA believes that the factors applicable under section 166(c) of the Act are met when we establish a uniform national increment for NO_2 for each class of area that is augmented by an additional case-by-case procedural review to identify and protect against variable effects that could occur in especially sensitive areas before the increment is fully consumed.

(4) *Evaluation of effects at levels of increase below the ''safe harbor'' level.* With the above considerations in mind, we have reviewed the available effects information to determine whether there is a basis for using it to either support the existing increments or to find them inadequate for satisfying the criteria, goals, and purposes set forth in sections 166(c) and 160 of the Act. Selecting a framework for applying the criteria is an important first step. Because the increments define an allowable change in air quality rather than establish a uniform air quality ''ceiling'' for a particular pollutant, we believe that the basis for determining the adequacy of the increments should be a comparison of the maximum allowable pollutant increase or change (ambient pollutant concentration that would result from full increment consumption) with the pollutant concentrations at which the effects of concern (particularly the adverse effects associated with air quality values under section 166(c) of the Act) may occur. This approach relies upon the premise that in specific attainment areas where adverse effects caused by existing emissions may be experienced, specific control strategies designed to adequately reduce current levels of emissions (and air pollution) will be evaluated and the most appropriate course of action determined independently from the PSD program.

The problem that EPA immediately faces in trying to make the necessary comparative analysis of the ''safe harbor'' levels with lower increment levels is that for the adverse effects identified, in most instances the pollutant concentrations at which the effects may occur are not well defined. Based on the availability of scientific and technical information available during the period when the NO_2 increments were promulgated in 1988 as well as for the periodic review of the NO_2 NAAQS completed in 1996, there is great uncertainty about the specific relationship between the pollutant and its precise role in causing the effect. Moreover, while more recent research and studies have shed new light on the mechanisms by which NO_2 contributes—both directly and indirectly—to known adverse environmental effects, efforts to establish quantitative relationships (as explained further below) are only now under way. Nevertheless, what is already known about some of these cause-effect relationships is also helpful

in enabling us to reach a conclusion about the adequacy of the current increment levels.

As described earlier in the preamble under the discussion of environmental effects, many of the adverse effects indirectly related to emissions of NO_X (NO and NO_2) are caused (or contributed to) largely by nitrogen compounds (*e.g.*, nitrates, nitric acid) which are the result of chemical transformations from NO_2 while in the atmosphere. Thus, in order to attempt to determine an acceptable level of increase for ambient NO_2 concentrations, it is necessary to understand the quantitative relationship between the emissions of NO_2 and the adverse effect. This, in part, requires an understanding of the intermediate transformation processes, the deposition patterns and total quantities of those nitrogen compounds which may cause the effect of concern, as well as the nitrogen contribution to ecosystems from natural geobiochemical processes. Unfortunately, the atmospheric chemistry associated with NO_X is significantly more complex than that for SO_2. In addition to wet and dry nitric acid and nitrate aerosols such as ammonium nitrate (NH_4NO_3), emissions of NO_X can also produce other end products, such as peroxyacetyl nitrates (PAN). Also, NO_X may result, either directly or indirectly, in the formation of oxidant species such as the OH radical, O_3, and H_2O_2, which alter transformation rates of NO_X. (Butler, 2003.)

The difficulty of establishing these relationships is further illustrated by EPA's experience in evaluating the feasibility of setting an acid deposition standard. Under section 404 of the 1990 Amendments, Public Law 101–549, Congress directed EPA to conduct a study of the feasibility and effectiveness of an acid deposition standard(s), to report to Congress on the role that a deposition standard(s) might play in supplementing the acidic deposition program adopted in title IV, and to determine what measures would be needed to integrate an acid deposition standard with that program. The EPA completed this study, ''Acid Deposition Feasibility Study, Report to Congress'' (1995), which concluded that current scientific uncertainties associated with determining the level of an acid deposition standard(s) are significant, and did not recommend setting an acid deposition standard. *See State of New York* v. *Browner,* 50 F. Supp. 2d 141, 149 (N.D.N.Y. 1999) (rejecting States' claim that section 404 required that the report include a deposition standard that would be sufficient to protect sensitive aquatic and terrestrial resources, and affirming EPA interpretation that duty was limited to ''consideration of a description'' of such standards). While EPA has recognized that programs, such as the proposed CAIR (69 FR 4566, Jan. 30, 2004)), that are intended to achieve NO_X emissions reductions pursuant to other statutory provisions, will help mitigate acid deposition problems, none of those programs purport to set an acid deposition standard.

Some recent studies are attempting to address the various parameters that together could establish a quantitative relationship between emissions of NO_X and the adverse environmental effects resulting from nitrogen deposition and acidic deposition from nitrates. While some study results provide evidence of a relationship between NO_X emissions and precipitation (wet deposition) NO_3^-, the results of efforts to establish a quantitative relationship between NO_X emissions and total (wet and dry) nitrogen deposition have been inconclusive (Butler, 2000, 2003).

Other recent studies examine the various sources of the nitrogen input (industry, transportation, agriculture) the geographical location of different nitrogen loadings, trends in deposition rates, as well as the specific effects of nitrogen deposition on specific ecosystems. These studies in general emphasize the importance of reducing current emissions of NO_X as part of a strategy for reducing observed impacts and promoting ecosystem recovery. However, such studies have not yielded the type of information needed to adequately evaluate different levels of maximum allowable pollutant increases with respect to the specific impacts such levels would have on the ecosystems.

We have evaluated whether the concept of a ''critical load,'' as described more fully in section VII of this preamble, could be used to identify an alternative increment level, but we believe our current knowledge about critical loads for nitrogen does not provide a sufficient basis for establishing a uniform, national standard such as a PSD increment. Because of the vastly differing sensitivities and potential effects associated with ecosystem resources in different regions of the country, we believe that critical loads do not represent an appropriate tool for setting a single, uniform, national standard, such as a PSD increment level. Even in cases where the deposition rate of a pollutant is relatively consistent from one location to another, the sensitivity of individual ecosystems varies greatly depending on a number of different variables, including climate, diversity of species, history of land use, and the existence of other natural and anthropogenic stresses.

Identifying the cause-effect relationship of nitrogen deposition on various ecosystems can be problematic for a number of other reasons as well. Some effects are believed to be the result of combined pollutant impacts, such as the acidification of lakes from both sulfur and nitrogen deposition. Some water systems have exhibited high levels of nitrogen in the absence of anthropogenic sources. In addition, some effects of changing deposition may take years before the ecosystem comes into balance with the cumulative amounts of nitrogen inputs. A noted problem in the West is that nitrogen deposition can include the combined contributions of emissions from NO_X (which form nitrates and nitric acid in the atmosphere) and ammonia (ammonium). Finally, current levels of nitrogen deposition may provide passive fertilization for forests and terrestrial ecosystems where nutrients are a limiting factor and for some croplands.

As discussed in the welfare effects section (V.C.2), although we are seeing effects at current nitrogen deposition rates, for the above reasons we believe that it is not technically or practicably feasible to identify a basis for concluding that the existing NO_2 increments are inadequate to provide protection against the types of adverse effects on ecosystems that may occur in some areas notwithstanding compliance with the NAAQS. In particular, it is not possible to determine a different level of increment protection that would define a significance level for ecosystem effects associated with emissions of NO_X. Currently available information does not provide a nationally applicable, quantitative basis for revising the levels of the existing NO_2 increments. The EPA solicits comment on possible approaches that should be considered, including the concept of critical loads, for further evaluating the existing NO2 increments. However, under today's action, we are not proposing any changes to those increments.

(5) *Qualitative consideration of factors.* Because we cannot use the effects data to quantify an alternative level of increase to the ''safe harbor'' that protects air quality values, health and welfare, and parks while ensuring economic growth consistent with the preservation of clean air resources, we must instead make a qualitative judgment whether the existing increments or some alternative meets

the applicable factors. In this situation, we believe that determining the increment levels that satisfy the factors applicable under section 166(c) is ultimately a policy choice that the Administrator must make, similar to the policy choice the Administrator must make in setting a primary NAAQS ''with an adequate margin of safety.'' *See Lead Industries Ass'n* v. *EPA*, 647 F.2d 1130, 1147 (DC Cir. 1980) (where information is insufficient to permit fully informed factual determinations, the Administrator's decisions rest largely on policy judgments). Using a similar approach is warranted because both section 109 and section 166 place great weight ''in the Administrator's judgment'' in making choices regarding an adequate margin of safety or protecting against any effects that may still occur—both areas of inquiry characterized by great uncertainty. Thus, in the process for setting NAAQS, the Administrator looks to factors such as the uncertainty of the science, the seriousness of the health effects, and the magnitude of the environmental problem (isolated or commonplace). *E.g.*, 62 FR 38652 (July 18, 1997) ($PM_{2.5}$ NAAQS).

A pure environmental protection analysis (protecting AQRVs, health and welfare, and parks) might suggest that we permit no or minimal increases in some areas because there are some data indicating that an effect may be attributable to NO_X emissions. However, as explained earlier, we do not believe that Congress intended for the PSD program to eliminate all adverse effects. Thus, rather than just seeking to eliminate all effects, we must attempt to identify a level of increase at which any additional effects beyond existing (or baseline) levels would be ''significant'' and protect against those potential effects. Furthermore, we need to ensure that our increments provide room for economic growth. Congress intended for EPA to weigh these considerations carefully and establish regulations that balance economic growth and environmental protection.

In making this policy judgment, we give particular weight to the policy judgment that Congress made when it set the statutory increments as a percentage-of-the-NAAQS. In section 166 of the Act, Congress directed that EPA study the establishment of PSD regulations for other pollutants for which Congress did not wish to set standards at the time. Congress' own reluctance to set increments to prevent significant deterioration of air quality due to emissions of NO_X, and the provisions ensuring time for Congressional review and action, suggest that Congress intended for EPA to avoid speculative judgments about the science where data is lacking. Having conducted such a study and finding difficulty establishing a direct relationship between adverse effects and particular levels of increase in pollution, we believe it is appropriate to consider the approach that Congress used. Thus, in the absence of specific data showing that a marginal increase of a particular level below the ''safe harbor'' would better protect health, welfare, parks, and air quality values, we give weight in our qualitative analysis of the factors applicable under section 166(c) to the method that Congress used to establish the statutory increments.

In making this qualitative judgment, we also consider the overall regulatory framework that we have established in the PSD regulations for NO_X. This framework includes a case-by-case analysis of each permit application to identify additional impacts (*e.g.*, soils and vegetation), a special review by the FLM of potential adverse effects on air quality values in parks and special areas, and a requirement that all new and modified sources install BACT. In addition, the area classification system ensures that there will be economic growth in particular areas that are consistent with the values of each State and individual communities within States.

When coupled with the overall framework of PSD regulations applicable to NO_X, we believe the ''safe harbor'' approach for setting the increment levels is sufficient to satisfy the factors applicable under section 166(c). This approach ensures economic growth and that each area receives a basic level of protection consistent with Congressional policy and an additional case-by-case review of effects on air quality values and parks and special areas. Under this circumstance, we see no basis to deviate from the approach established by Congress for the statutory increments. Thus, we propose to retain the existing NO2 increments that were established at the ''safe harbor'' level using the percentage-of-NAAQS approach. We request comment on this proposal, the supporting analysis, and reasoning described above.

b. Additional Increments

(1) *Pollutant form for which increments for NO_X are set.* Another disputed issue in the *EDF* v. *EPA* case was EPA's action in 1988 to establish an increment for only one form of NO_X, *i.e.*, NO_2. We promulgated increments for NO_2 in 1988 because NO_2 was the only form of NO_X for which we had established a NAAQS at that time. However, in *EDF* v. *EPA*, the court held that section 166(c) of the Act ''commands the Administrator to inquire into a pollutant's relation to the goals and purposes of the statute, and we find nothing in the language or legislative history suggesting that this duty could be satisfied simply by referencing the ambient standards.'' 898 F.2d at 190. Thus, in this rulemaking action on remand, we must evaluate whether, considering the factors applicable under section 166(c), we should promulgate additional increments for other forms of NO_X.

Under the ''contingent safe harbor'' approach discussed above, we begin our analysis with ''safe harbor'' increments that only address increases in ambient NO_2 concentrations. Since 1988, EPA has not identified a basis to establish a NAAQS for any form of NO_X other than NO_2. Thus, it remains the case today that the only NAAQS established for NO_X are the current NO_2 NAAQS which have not changed since 1971. We believe that increments based on the same pollutant for which we have a NAAQS are the ''safe harbor'' for purpose of this rulemaking. Establishing increments for this form of NO_X is ''at least as effective'' as the statutory increments in section 163 of the Act. Congress established statutory increments in section 163 for only those forms of PM and sulfur oxides for which we had promulgated a NAAQS.[25] As discussed above, the need for an increment necessarily derives from the establishment of a NAAQS, which is the basic measure of air quality under the CAA. Thus, an increment based on this basic measure of air quality is ''at least as effective'' as the statutory increments in section 163 of the Act. The court in *EDF* v. *EPA* rejected the argument that increments based on the same form of NO_X as the NAAQS were not ''as effective as'' the increments in section 163. 898 F.2d at 190.

We noted earlier in this preamble that seven oxides of nitrogen are known to occur in the atmosphere. (*See* footnote 9.) Among these, EPA recognizes the significant role that nitrates play in many of the indirect welfare effects of NO_2. Nitrate is a principal contributor to the effects on ecosystems of both nitrogen deposition (eutrophication and acidic deposition) and visibility impairment (regional haze). As such,

[25] Since that time, we have refined the original NAAQS for PM (then measured as TSP) to focus on coarse (PM_{10}) and fine ($PM_{2.5}$) particulate matter. We subsequently established increments for PM_{10} in accordance with section 166(f) of the Act. 58 FR 31622 (June 3, 1993). We are considering establishing increments for $PM_{2.5}$.

nitrates conceivably could represent a form of NO_X which should be considered for regulation under the PSD increments. For several reasons, however, EPA believes that it is not necessary to adopt individual increments for nitrate.

First, nitrate compounds found in the atmosphere generally are formed from the oxidation of NO and NO_2 as they are transported in the atmosphere.[26] Thus, the existing NO_2 increments can generally be viewed as a limiting factor in the formation of nitrate concentrations downwind. By limiting the allowable increase in ambient concentrations of NO_2 in the immediate area surrounding proposed new or modified PSD source, some limit can effectively be placed on downwind NO_3^- formation as well.

Another consideration is that ambient nitrate can often exist in the atmosphere in particulate form, *e.g.*, ammonium nitrate or nitric acid vapor. Nitric acid (a nitrate formed through the gas-phase reaction of NO_2 and OH), which plays a key role in acid rain, in its gaseous phase can also react with airborne particle surfaces to form nitrate salts. When ambient concentrations of ammonia and nitric acid are sufficiently high, ammonium nitrate can be formed. Nitrate particulates contribute to regional haze. The EPA believes that it can more effectively regulate nitrates particulate under the PM program. In fact, the effects of nitrate particulate were considered in setting the NAAQS for $PM_{2.5}$ and will be considered in the development of the upcoming PSD increments for $PM_{2.5}$ as well.

Finally, EPA does not believe that sufficient information is available to adequately establish levels for nitrate increments, even if it were to determine that the establishment of increments for nitrate are necessary to satisfy the factors applicable under section 166(c). We described the difficulties of establishing alternative increment levels using the available information in the previous section.

In the absence of information showing that increments based on the same pollutant of the NAAQS fail to protect air quality values, health and welfare, and parks and special areas, from emissions increases associated with new and modified PSD sources, we propose to retain the ''safe harbor'' increments without adopting additional increments for NO_X. Under these circumstances, the NAAQS provides a reasonable benchmark for identifying the pollutant to be used in an increment. Section 160(1) of the Act is expressed by using the NAAQS as a benchmark and also uses standards that mirror the standards applicable to the NAAQS-setting process—''protect public health and welfare.'' The court in *EDF* v. *EPA* rejected use of the NAAQS as the ''sole basis'' for deriving the increments for NO_X but did not preclude EPA from adopting only increments based on the same pollutant as the NAAQS when EPA has determined that such increments are sufficient to satisfy the special values embodied in the factors applicable under section 166(c) of the Act. *See* 898 F.2d at 190.

Thus, we propose to retain the NO_2 increments and do not propose to establish additional increments for other forms of NO_X. We request comment on this proposed action and our basis for it.

(2) *Time periods for increments.* In accordance with the court's opinion in *EDF* v. *EPA*, we have also evaluated whether we should promulgate additional NO_2 increments based on a short-term averaging time. In the 1988 rule, EPA did not set short-term NO_2 increments because a short-term NAAQS for NO_2 that would define short-term air quality for NO_2 did not exist. However, the court directed us to evaluate whether, considering the factors applicable under section 166(c), we should promulgate additional increments for short-term averaging times. 898 F.2d at 190.

Under the ''contingent safe harbor'' approach discussed above, we begin our analysis with the ''safe harbor'' increments that are based on the same annual averaging time used in the NAAQS. Since 1988, EPA has not found cause to promulgate a NAAQS for any averaging time shorter than annual. Thus, since this is the only averaging time used in the current NAAQS, we consider an increment that employs this averaging time to be a ''safe harbor'' that is ''at least as effective'' as the statutory increments in section 163 of the Act. The increments listed in section 163 of the Act are based on the same averaging times that were contained in the NAAQS at the time Congress adopted this provision. The NAAQS are the basic measure of air quality under the CAA. Therefore, an increment that uses this standard as a benchmark is ''at least as effective'' as the statutory increments in section 163 of the Act. The court in *EDF* v. *EPA* rejected the argument that an increment based on the same averaging time as the NAAQS was not ''as effective as'' the increments in section 163. 898 F.2d at 190.

We have further analyzed whether a short-term increment is necessary to satisfy the factors applicable under section 166(c) of the Act. Based on this review, we believe that an annual average increment for NO_2 is sufficient to protect air quality values, health and welfare, and parks and special areas from potential short-term effects. Thus, we propose to retain the existing annual NO_2 increments and do not propose to adopt additional increments for shorter time periods.

The same reasons that supported our decision not to set a short-term NAAQS for NO_2 weigh against setting a short-term NO_2 increment. We have not identified health effects from short-term exposure to NO_2 that occur in areas in attainment with the NAAQS. In addition, we do not have sufficient information to conclude that the welfare effects within the scope of our review are caused solely by short-term NO_X concentrations.

In our last review (1995–1996) of the NO_2 NAAQS, EPA reviewed the short-term effects of NO_2 on human health and concluded that a short-term standard was not justified. With regard to public health, the Administrator concluded that the annual standard of 0.053 ppm NO_2 provides ''substantial protection'' against the identified health effects (mild changes in pulmonary function or airway responsiveness in sensitive individuals) associated with short-term peaks occurring in the range of 0.2 to 0.5 ppm—almost one order of magnitude higher than the annual standard. 60 FR 52875, 52879–80 (October 11, 1995). The adequacy of the annual standard to protect against these potential short-term effects was further supported by the absence of documented effects in some studies at higher concentrations (3 ppm to 4 ppm). The Administrator also took into account that where the annual NO_2 standard is attained—currently all areas of the country—the occurrence of 1-hour NO_2 values greater than 0.15 ppm would be unlikely. *Id.*

With respect to public welfare effects from NO_2, the Administrator also concluded that the impact on terrestrial vegetation from short-term exposures to NO_2 under existing ambient levels is insignificant and did not warrant a short-term standard (1995 Staff Paper, p. 91). The Administrator also considered the welfare impacts from nitrates during the last review of the NO_2 NAAQS. Although we believe we are not required to consider these PM impacts in selecting measures to prevent significant deterioration of air quality due to emissions of NO_X under section 166(a), we find it noteworthy that none of the welfare impacts from nitrates were attributed to short-term exposure

[26] Another source of nitrates, not associated with emissions of NO_X, is the nitrification of ammonium by bacteria in stream beds.

to nitrates and that significant uncertainties in the data were recognized. Even in those cases where nitrogen deposition was shown to cause episodic or ''short-term'' effects, the problem was typically the result of a long-term accumulation of nitrogen compounds that were released suddenly to the ecosystem (*e.g.,* snowmelt runoff to lakes and streams) rather than the result of short-term concentrations of nitrogen compounds in the air.

The conclusions from the last NAAQS review regarding the lack of a quantitative basis for establishing any short-term NO_2 standard were also reported in an EPA document issued in 1997, entitled ''Nitrogen Oxides: Impacts on Public Health and the Environment.'' *Id.* at 33 (''While short-term effects from NO_2 are documented in the scientific literature, the available information is insufficient to provide an adequate scientific basis for establishing any specific short-term standard.'').

Additionally, independent of the short-term exposure issue, as discussed in another section of this preamble, EPA has previously identified problems that preclude the establishment of a national standard to protect against eutrophication and acid deposition. These include: (a) The site-specific nature of such impacts (*e.g.,* existing levels of nitrogen in the ecosystem and sensitivity of vegetation to additional inputs), which cannot be addressed by a uniform national standard; and (b) significant uncertainties over the level of contribution of NO_X sources to nitrogen deposition, determining whether an ecosystem was nitrogen saturated, and a lack of data establishing the quantitative levels of concern. 60 FR 52874, 52884 (October 11, 1995).

EPA has also recognized that NO_X results in the formation of ozone and nitrate particulates under certain conditions. Although ozone, PM_{10}, and $PM_{2.5}$ have short-term NAAQS to protect against public health effects associated with short-term exposure to these pollutants, EPA does not consider the impacts from these criteria pollutants, because it interprets section 166 to require consideration of these criteria pollutants separate and distinct from the duty to consider NO_X.

Thus, considering the factors applicable under section 166(c), EPA's proposed option 1 is to retain the annual average increments and not establish any additional increments based on a shorter averaging time. We request comment on this option and our basis for proposing it.

B. Regional Cap and Trade Program

EPA's second proposed option for achieving the goals and objectives set forth in the Act to prevent significant deterioration of air quality due to emissions of NO_X is to create an incentive for the States to implement a market-based cap and trade program to achieve the goals and purposes of PSD. Under this approach, we would permit States that adopt a cap and trade program under specific CAA programs being considered by EPA to implement this cap and trade program in lieu of an increment system for NO_X. Thus, States would not need to require source-specific compliance demonstrations for the NO_2 increments under their PSD regulations. This cap and trade program would have to be included in the EPA-approved SIP for each affected State and would have to satisfy the requirements of sections 166(c) and 166(d) of the Act.

Under this option, we propose a finding that a cap and trade program with specific elements and characteristics would be sufficient to fulfill the requirements of section 166, and thus obviate the need for States to implement the NO_2 increments and conduct case-by-case analyses of whether a proposed new or modified major source would cause or contribute to an exceedance of an increment. We propose to allow States to request elimination of the NO_2 increments from their PSD programs following their submission of a SIP revision that contains a cap and trade program with these specific elements.

EPA believes that the requirements of section 166 to prevent significant deterioration of air quality could be satisfied if States were to adopt the model EGU cap and trade program proposed for States in the eastern U.S. in the CAIR. Under the CAIR proposal, specific States in the East and Midwest would be required to submit SIPs that contain controls sufficient to eliminate specified amounts of NO_X emissions in order to reduce emissions contributing to nonattainment of the $PM_{2.5}$ and ozone NAAQS in downwind States. The EPA indicated in the CAIR proposal that States subject to CAIR have the option to achieve these reductions by participating in a regional cap and trade program for EGUs that would be administered by EPA. Because the CAIR cap and trade program would require all of the sources participating in the program to collectively meet a NO_X cap, and because this NO_X cap is set at a level that ensures significant NO_X reductions from the source categories covered by the cap, we believe it would be equivalent to or better than the existing NO_2 increment approach which allows increases in emissions. Thus, EPA proposes that States participating in this program could rely upon it as a substitute for implementing the existing increment system for NO_X.

EPA does not propose to adopt or require the States to implement such a cap and trade program under legal authority contained in the statutory provisions for PSD. However, we believe the air quality benefits that such a program would provide could serve to ensure that no significant air quality deterioration will occur. Based on our analysis supporting the CAIR proposal, we believe we can show that the CAIR model cap and trade program, when implemented, will achieve reductions in NO_X emissions from EGUs that are sufficient to compensate for projected increases in NO_X emissions from new or modified major sources in other source categories.

1. Description of Cap and Trade Programs

A cap and trade program is a market-based system that is designed to achieve required emissions reductions as needed to reach a particular emissions goal or cap within a predetermined geographical area. The basis for the overall emissions cap is typically to meet specific air quality objectives for the area or an affected downwind area. The emissions ''cap'' limits the total mass emissions for the area of interest by providing a limited number of emission allowances—each allowance authorizing the emission of a specific amount (*e.g.,* under title IV, one Acid Rain Program allowance authorizes the emission of one ton of SO_2).[27] Setting the emissions cap properly is key to achieving the desired environmental outcome. The allowance trading market provides a flexible mechanism for sources to find the least-cost reductions necessary to meet the cap.

For example, a source with a total of 400 allowances (400 tons of NO_X emissions) that is currently emitting 700 tpy of NO_X could, factoring in economic considerations, meet its requirement to turn in allowances equal to its emissions by (1) directly reducing current emissions by 300 tons via the installation of controls, fuel switching, reducing utilization, etc., (2) purchasing allowances from other capped sources within the prescribed region that have controlled their emissions beyond the level needed to meet their requirement to turn in allowances equal to their

[27] Under CAIR, EPA has proposed that more than one Acid Rain allowance would have to be turned in for each ton of SO_2 emissions.

emissions, or (3) some combination of these two approaches.

In the case of the NO_X SIP Call, the regionwide emissions cap was apportioned to individual States, thereby creating State-level ''emission budgets.'' Typically, the emissions from an entire sector are ''capped'' to ensure that emissions are not simply shifted from a capped unit to one that is not subject to the cap.

Once an emissions goal or cap is established for an area, the regulating authority allocates emission allowances to individual sources. In the case of the Acid Rain Program and the NO_X SIP Call, EPA and individual States, respectively, allocate the emission allowances to the sources. Sources comply with cap and trade programs by holding enough allowances in their account to cover their reported emissions. This is independent of the allocation process, as the allowance trading market allows sources to reduce their emissions or purchase additional emission allowances.

A cap and trade program is generally more cost-effective when more sources are eligible to participate and allowances can be traded without restriction. For example, in a regionally based cap and trade program, when affected States allow the sources within their jurisdiction to participate in the opportunity for emissions trading anywhere within the defined region, this trading affords the flexibility needed to enable sources to achieve established emission goals at lowest possible cost and encourage least-cost compliance over the entire region.

EPA and States have had considerable success achieving specific air quality goals through the implementation of cap and trade programs. Title IV of the 1990 Amendments established the Acid Rain Program to address the deposition of acidic particles and gases.[28] The Acid Rain Program utilizes a market-based cap and trade approach to require power plants to reduce SO_2 emissions to 50 percent of the 1980 emission levels. At full implementation after 2010, emissions will be limited (*i.e.*, ''capped'') to 8.95 million tons in the contiguous U.S. Individual existing units are directly allocated their share of the total emissions allowances, each allowance being an authorization to emit a ton of SO_2.

The cap and trade program under the Acid Rain Program has created financial incentives for electricity generators to look for new and low-cost ways to reduce emissions, and to improve the effectiveness of pollution control equipment, at costs much lower than predicted. The cap on emissions, automatic penalties for noncompliance, and stringent emissions monitoring and reporting requirements ensure that environmental goals are achieved and sustained, while allowing for flexible compliance strategies that take advantage of trading and banking. The level of compliance under the Acid Rain Program continues to be quite high, measuring over 99 percent.

In 1998, EPA promulgated a rule determining that 22 States[29] and the District of Columbia in the eastern half of the country significantly contribute to 1-hour and 8-hour ozone nonattainment problems in downwind States.[30] This rule, generally known as the NO_X SIP Call, required those affected jurisdictions to revise their SIPs to include NO_X control measures to mitigate the significant ozone transport. The NO_X SIP Call requires ozone season NO_X reductions which EPA determined by projecting NO_X emissions to 2007 for all source categories, and then reducing those emissions through controls that EPA determined to be highly cost-effective.[31] The affected States were required to submit SIPs providing the resulting amounts of emissions reductions.

Under the NO_X SIP Call, States have the flexibility to determine the mix of controls to meet their emissions reductions requirements. However, the rule provides that if the SIP controls EGUs, then the SIP must establish a budget, or cap, for EGUs. The EPA recommended that each State authorize a trading program for NO_X emissions from EGUs. Consequently, each State chose to adopt a cap and trade program based on a model rule developed by EPA. Some States essentially adopted EPA's full model rule ''as is,'' while other States adopted the model rule with changes to the sections that EPA specifically identified as areas in which States may have some flexibility.

Following the NO_X SIP Call, EPA carried out a broader assessment to determine the role of transported emissions from upwind States in contributing to unhealthy levels of fine particles ($PM_{2.5}$) and 8-hour ozone in downwind States. As a result, on January 30, 2004, at 69 FR 4566, EPA proposed to find that 29 States and the District of Columbia contribute significantly to nonattainment of the NAAQS for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States through transport of both NO_X and SO_2 emissions. In this proposal, originally known as the IAQR, EPA expressed its intent to assist States to attain the NAAQS in a way that is timely, practical, and cost effective, by proposing emissions reduction requirements for NO_X and SO_2, that would apply to upwind States.

The proposed IAQR (now known as the CAIR) requires certain States in the eastern portion of the U.S. to submit SIP measures to ensure that emissions reductions are achieved as needed to mitigate transport of $PM_{2.5}$) and/or ozone pollution and its main precursors—SO_2 and NO_X—across State boundaries.[32]

The proposed CAIR focuses on States whose emissions are significantly contributing to fine particle and ozone pollution on other downwind States in the eastern half of the U.S. The EPA identified emissions control requirements in the form of emissions budgets for 29 States and the District of Columbia on the basis of their contribution to nonattainment problems in the eastern half of the U.S. In determining States' emissions reduction requirements, EPA considered both the level and timing of the emissions budgets for the electric power industry at a regional level and State level. The EPA calculated the amount of each State's NO_X emissions reduction requirement based on reductions that were determined to be highly cost-

[28] The Acid rain Program requires a phased reduction of emissions of SO_2 (and, to a lesser extent, NO_X) from power generators that sell electricity.

[29] The original jurisdictions were: Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. Subsequent court and EPA actions have slightly reduced the affected area.

[30] *See* ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Final Rule,'' 63 FR 57356 (October 27, 1998). The EPA also published two Technical Amendments revising the NO_X SIP Call emission reduction requirements (64 FR 26298, May 14, 1999; and 65 FR 11222, March 2, 2000).

[31] Under the NO_X SIP Call, States are only required to provide for the prescribed emissions reductions during the summer ozone season, and not year-round.

[32] Clean Air Act section 110(a)(2)(D) requires SIPs to contain adequate provisions prohibiting air pollutant emissions from sources or activities in those States that contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to a NAAQS. EPA proposed the IAQR requiring SIP revisions in 28 States and the District of Columbia to reduce SO_2 and/or NO_X emissions, which are important precursors of $PM_{2.5}$ (NO_X and SO_2) and ozone (NO_X).

effective for large electric generating units (EGUs).[33]

EPA's proposal to use a cap based on highly cost-effective reductions from the electric power industry resulted in part from the fact that we had relatively complete information with respect to a number of key factors for that industry, that was not available for other sources. In addition, the electric power industry emits relatively large amounts of the relevant emissions. This factor was considered particularly important in a case where the Federal government was proposing a multi-State regional approach to reducing transported pollution.

As proposed, each affected State may independently determine which emissions sources to subject to controls, and which control measures to adopt to satisfy its reduction requirements. Alternatively, States were given the opportunity to participate in a regional cap and trade program to cap emissions from EGUs. The EPA indicated that it would administer the cap and trade program in a manner similar to the NO_X SIP Call program.

If the State chooses to control EGUs, then it must establish a budget—that is, an emissions cap—for those sources. The State may allow them to participate in the interstate cap and trade program, and, if so, the State must follow EPA's model rule, which contains required provisions including monitoring and reporting, applicability, and penalties. If a State wants to control EGUs but does not want to allow EGUs to participate in the interstate cap and trade program, the State has flexibility to do so, but the State EGU rule must contain certain minimum requirements such as capping emissions from EGUs and requiring part 75 monitoring.

A supplemental notice, issued on June 10, 2004 (69 FR 32684), provided additional detail on establishing State emissions budgets (*i.e.*, emissions reductions requirements) and significant additional information concerning EPA's model cap and trade program for EGUs, including, among other things, requirements for adopting the model cap and trade rules, flexibility afforded to States in adopting certain program features, and proposed regulatory language covering monitoring, recordkeeping, and reporting requirements.

[33] EPA based its emissions reduction requirements on reductions from large EGUs, *i.e.*, boilers and turbines serving an electric generator with a nameplate capacity exceeding 25 MW and producing power for sale. EPA further proposed that its model regional cap and trade program would apply to these units.

The emission reductions for NO_X expected under the CAIR are significant. Under the CAIR, EPA proposes to implement highly cost-effective reductions in two phases, with a Phase I compliance date of January 1, 2010, and a Phase II compliance date of January 1, 2015. When fully implemented, NO_X emission reductions would be substantial, measuring about 1.5 million tons in 2010 and 1.8 million tons in 2015. This represents a reduction approximately 65 percent below current NO_X levels.

2. Using a Cap and Trade Program in Lieu of an Increment System for NO_X

a. Cap and Trade Program Would Meet Requirements of Section 166

We believe that EPA's obligations to promulgate pollutant-specific PSD regulations for NO_X under section 166 of the CAA could be satisfied by giving States the option to implement a cap and trade regulatory framework for sources of NO_X that achieves the objectives of the PSD program. More specifically, we believe that a State cap on EGU NO_X emissions at the level described in the CAIR proposal for that State would achieve emissions reductions that would prevent significant deterioration of air quality from emissions of NO_X. By participating in this program and establishing a cap on NO_X emissions from EGUs at such a level, we believe States could achieve emissions reductions that produce ambient air quality levels equivalent to or better than the air quality allowed by the existing NO_2 increments and associated regulations. Moreover, a market-based cap and trade system would provide greater certainty that a specific level of emissions and air quality will be attained and maintained. Thus, we believe this may be an effective alternative to an increment system for NO_X.

(1) *Cap and trade framework fulfills obligations under section 166.* A cap and trade framework has many elements that satisfy the requirements of section 166(c), and such an approach would qualify as an ''other measure'' that is permissible under section 166(d). Thus, we propose to allow States, in lieu of an increment approach, to implement a cap and trade framework that, in combination with specific program elements, would meet the requirements of sections 166(c) and 166(d).

A cap on emissions that is allocated to States through budgets and to individual sources in the form of tradeable allowances provides a numerical measure against which permit applications can be evaluated. Under a cap and trade approach, States could prohibit the issuance of a PSD permit to a new or modified source that is subject to the cap unless the source can ensure that it will have a sufficient number of allowances to cover its proposed emissions increase. In evaluating a permit application for such a source, a permit writer would only need to verify that the permit requires the source to turn in allowances equal to its emissions each year. Implementation of the cap in this manner would not only satisfy the ''numerical measure'' requirement but, for those sources subject to the cap, would also be much more efficient and less time-consuming than the current process of conducting a source impact analysis to make sure the proposed emissions increase will not cause or contribute to an increment violation. Where a cap is used to achieve emissions reductions necessary to offset future growth by sources not subject to the cap, the permit writer would need to verify that emissions from the sources subject to the cap remain below required levels in order to issue a permit to a source not covered by the cap.

For PSD purposes, the market-based economic incentive inherent in a cap and trade framework could also provide a powerful stimulus for improved control technology at those sources subject to the cap. Even if new major sources and major modifications subject to the cap still have to meet requirements for BACT, the market for allowances could cause the facilities to select a more stringent BACT than would normally be selected. This, in turn, could also have a carry-over effect for subsequent BACT determinations involving other new sources that are not under the cap and trade program.

By allowing States to implement a regional cap and trade system, we could address the goal in section 160(4) of the Act to assure that emissions in one State do not interfere with the PSD program in another State. By first developing a stringent overall cap requiring substantial reductions in NO_X emissions (*e.g.*, 70 percent) for an entire region, the cap and trade program provides assurance to downwind States that emissions from upwind States will be effectively managed over time.

A cap and trade approach that operates in concert with the PSD preconstruction permit program would continue to fulfill the PSD goal in section 160(5) that any decision to permit increased air pollution not be made without careful evaluation and public participation. For reasons discussed below, major new sources and major modifications will still require

preconstruction permits and will have to comply with existing requirements for BACT. Thus, the public will have an opportunity to comment on each permit. However, the total allowable emissions from sources subject to the cap would be determined by regulatory authorities at the time that the cap is first developed. This process would still involve the evaluation required under section 160(5), but it would be conducted in up-front modeling to demonstrate the effectiveness of the cap, well in advance of any case-by-case permit review for sources subject to the cap that must obtain allowances and other sources outside the cap and trade system that could not be permitted without verification that emissions from affected sources do not exceed the cap. The public would have the opportunity to comment on the cap and thus could participate in any decision to establish a cap that allows increased air pollution. In the case of the NO_X cap set forth in the CAIR proposal, we recognize that this comment opportunity has passed. However, under this option we are not proposing to authorize States to adopt a program that would allow an increase in air pollution. We are proposing to allow States to implement, in lieu of an NO_2 increment, a cap and trade program that would achieve overall reductions in NO_X emissions by reducing emissions from certain sources to offset expected increases from other sources.

In order to fulfill the minimum requirements of section 166(d) under the ''contingent safe harbor'' approach, the cap selected for the cap and trade program would have to be at least as effective as the increments established by statute for PM and SO_2 in each affected State. As discussed above, these statutory increments were established as a percentage of the NAAQS, which are expressed as an ambient concentration of air pollution. As a result, the PM and SO_2 increments are also expressed in ambient concentration form and reflect the maximum marginal increase in air pollution concentration allowed in an attainment area. Under the cap and trade approach, we would allow States to establish a cap on total NO_X emissions from specific sources, expressed in terms of mass (tons) rather than an ambient concentration (*e.g.*, micrograms per cubic meter). To show that a particular emissions cap on specific sources is as effective as the concentration-based increments for PM and SO_2, we could rely on ambient air quality modeling that projects the concentration in each part of a State that would result from achieving a particular cap. A cap that maintains ambient concentrations of NO_2 within a certain percentage of the pre-cap NO_2 levels in most areas (assuming no increment violations currently exist) could then be demonstrated to be at least as effective as the statutory increments. However, to the extent that modeling is not available or is insufficient to make such a showing, we request comment on how we might use qualitative measures to identify whether a particular cap is at least as effective as the increments for PM and SO_2. We also request comment on whether, in all cases or some cases, this showing would be made inherently because an emissions cap less than or equal to the current level (or baseline level) is prima facie evidence that significant deterioration is being prevented.

A cap at a level that is as effective as the increments for PM and SO_2 would represent the ''safe harbor'' cap under the ''contingent safe harbor'' interpretation we are proposing today for section 166 of the Act. Under the cap and trade option, once the safe harbor is identified in this manner, we would then analyze whether it satisfies the requirements of section 166(c) by using the same balancing test discussed above. We would use this balancing test to determine whether a cap other than the ''safe harbor'' cap is needed to protect public health and welfare, as well as air quality values, while also allowing for economic growth consistent with the preservation of existing clear air resources.

We believe a cap and trade framework is particularly well-suited for striking the required balance between effective environmental protection at a cost that is not detrimental to economic growth. The capping of total emissions of pollutants throughout a geographic region, and over a period of time, ensures achievement of the environmental goal while allowing economic growth (new sources or increased use of existing sources). Within the constraints of the NAAQS and the available increment, the addition of new sources to the regulated sector or an increase in activity at existing sources can increase total emissions even though the desired emission rate control is in effect.

(2) *Cap on NO_X* emissions proposed in the CAIR would satisfy PSD requirements. Using this analytical approach, we propose to find that a cap and trade program that caps NO_X emissions at the levels proposed in the CAIR would fulfill the requirements of section 166 of the Act. We believe a cap on NO_X of this magnitude would strike the required balance between the environmental protection and the economic growth goals of the PSD program.

The proposed cap on NO_X emissions contained in the CAIR would be established, under the authority of section 110(a)(2)(D) of the Act, on the basis of emissions reductions that can be achieved by installing highly cost-effective controls on EGUs. We believe a cap on NO_X emissions at this ''highly cost-effective'' level would meet the objectives of PSD by providing the most protection for AQRVs, health and welfare, and parks and other special areas, while also ensuring economic growth.

Our analysis in the CAIR proposal showed that a cap on NO_X emissions of this magnitude in the relevant region would produce improvements in visibility and reduce acid deposition and eutrophication of water bodies in the eastern U.S. *See* 69 FR 4566, 4642 (Jan. 30, 2004) (Section X: Benefits of Emissions Reductions in Addition to the PM and Ozone NAAQS). A more detailed discussion of these beneficial effects is provided in a document prepared for the CAIR and is entitled ''Benefits of the Proposed Interstate Air Quality Rule (January 2004).'' This document is available in the Air Docket for this rulemaking and also at *http://www.epa.gov/air/interstateairquality/tsd0175.pdf*.

Allowing States to improve ecosystem health in this manner, through a cap and trade approach, would satisfy our obligation to develop regulations under section 166 of the Act that provide protection for AQRVs, health and welfare, and parks. Our analysis to date indicates that a cap on NO_X emissions equivalent to the reductions proposed in the CAIR for the eastern U.S. would reduce adverse effects on AQRVs, health and welfare, and parks in this region. 69 FR 32684, 32706 (June 10, 2004).

As noted above, visibility is an important AQRV that is affected by emissions of NO_X. Reductions in emissions of NO_X at the level required in the CAIR proposal are expected to contribute to substantial visibility improvements in many parts of the eastern U.S., including Class I areas such as the Great Smoky Mountains.

NO_X emissions may also contribute to effects on AQRVs, welfare, and parks resulting from the deposition of nitrogen onto land and water. The reductions in NO_X emissions required in the CAIR proposal are anticipated to reduce nitrogen deposition. Reductions in nitrogen deposition will, in turn, reduce acidification and eutrophication of water bodies and have a positive impact upon current eutrophic conditions in

estuaries and coastal areas in the eastern region of the country. Reductions in nitrogen deposition are likely to have positive effects on the health and productivity of some forest systems. Furthermore, reductions of this magnitude would reduce deposition that damages cultural monuments and other materials.

In the CAIR proposal, we assessed the quantitative impacts of the proposed levels of NO_X and SO_2 reductions on the acidification of water bodies. Areas especially sensitive to acidification include portions of the Northeast (particularly the Adirondack and Catskill Mountains, portions of New England, and streams in the mid-Appalachian highlands) and Southeastern streams. Modeling for the CAIR indicated that as a result of the proposed reductions in SO_2 and NO_X, lakes in the Northeast and Adirondack Mountains would improve in acid buffering capacity. Specifically, we found that no lakes in the Adirondack Mountains were projected to be categorized as chronically acidic in 2030 as a result of the reductions proposed for the CAIR. In contrast, 12 percent of these lakes were projected to be chronically acidic without the emissions reductions envisioned in the CAIR proposal. For Northeast lakes in general, 6 percent of the lakes were anticipated to be chronically acidic before implementation of the proposal. The NO_X and SO_2 reductions called for in the CAIR proposal are expected to decrease the percentage of chronically acidic lakes in the Northeast to 1 percent.

We believe State implementation of caps on NO_X emissions at the levels set forth in the CAIR proposal would provide sufficient protection for AQRVs in all the Class I areas in the eastern half of the U.S. However, we request comment on whether, even with caps of this magnitude, States would need to implement additional measures under the model cap and trade program to guard against localized adverse impacts, particularly in Class I areas.

(3) *Cap and trade approach would provide ambient air quality analysis for all sources.* Under this cap and trade program for EGUs, we do not believe it will be necessary for any sources to conduct a site-specific ambient air quality analysis for NO_X in order to satisfy the requirements of section 165(a)(3) of the Act by showing that the source will not cause or contribute to air pollution in excess of the NAAQS or an increment. In order to permit States to adopt the CAIR model cap and trade program in lieu of NO_2 increments, EPA or the States would have to perform an ambient air quality analysis to show that the NO_X caps applicable to each State achieve enough reductions to ensure that increases in NO_X emissions from all new or modified sources will not result in an exceedance of the NO_2 NAAQS or cause significant deterioration of air quality.

If States adopt a cap and trade system and are not required to enforce the increment, sources would not be required under section 165(a)(3) to show that they would not cause or contribute to a violation of the NO_2 increment. Instead, the cap and trade program would fulfill the function of the NO_2 increments to prevent significant deterioration of air quality. However, the requirements of section 165(a)(3) would still be satisfied because EPA, rather than each individual source, would demonstrate that the proposed cap is sufficient to either prevent significant deterioration of air quality due to emissions of NO_X or prevent a violation of the NAAQS. Thus, it would be redundant and unnecessarily costly to require an individual source to conduct a site-specific air quality analysis under a cap and trade approach. A source subject to the cap would only need to show that it has enough allowances to cover its emissions. The total amount and distribution of allowances would already reflect the results of an air quality analysis conducted by the regulatory authority.

b. Using a Cap and Trade Program To Streamline the PSD Permitting Process

The discussion above illustrates some ways in which a cap and trade program can enable substantial streamlining of the PSD permit process. Such streamlining, allowing applicants to avoid various preconstruction review requirements, could significantly reduce both the resources needed to acquire the necessary construction permit and the time required to complete the permitting process. Both are important ways in which the PSD permit program can be improved so long as adverse impacts on the environment are not allowed to occur as a result.

Even though the model cap and trade program, as presently conceived, would apply only to certain electric power plants, the benefits of the streamlined PSD permitting process would be shared with all PSD applicants because of the inherent ability of the cap and trade program to enable a reduction in total statewide NO_X emissions from EGUs sufficient to compensate for increases in NO_X emissions in the State from other source categories of NO_X emissions.

Under the approach being proposed today, States would have the option to revise their implementation plans to include the necessary regulations to enable participation in and implementation of the EPA-administered cap and trade program for NO_X under CAIR. Once the necessary revisions are in place and in effect under the applicable SIPs, EPA would respond affirmatively to State requests to use the cap and trade program in lieu of source-specific compliance demonstration for the NO_2 increments. The State would not be required to conduct source-specific increment analyses so long as the State continues to implement the cap and trade program.

The cap and trade program would not provide a full exemption from the PSD permitting process. All new major stationary sources and major modifications, including both EGUs directly affected by the cap and trade program and non-EGU major sources, would still have to undergo some preconstruction review for a PSD permit prior to commencing construction on new projects that result in a significant net emissions increase for NO_X. Such permits would still need to include emissions limitations based on BACT. The primary benefit comes from the fact that source-specific analyses for the NO_2 increments and NO_2 NAAQS would not be required, as described in the above subsection.[34]

We believe BACT must continue to apply because this PSD requirement is based on section 165(a)(4) of the Act, not section 166, and cannot be fulfilled by using a cap and trade approach. In contrast, the ambient air quality analysis that is based on section 165(a)(3) could be conducted for all sources at the time a cap is established and thus need not be conducted again for each individual permit.

The EPA believes other requirements pertaining to air quality analyses might also become unnecessary under a cap and trade approach. For example, statewide air quality improvements shown to result from a cap and trade program, as described elsewhere in this

[34] State participation in a cap and trade mechanism would not replace the statutory requirement to meet the NAAQS for NO_2 at the local level, but rather helps achieve this requirement through significant reductions in background concentrations. While States will continue to have the obligation and the authority under the Act to assure that the NAAQS for NO_2 is being met, we do not believe this needs to be done on a source-specific basis under the PSD permitting program, but rather through the ongoing monitoring of ambient air quality using EPA-recognized monitoring sites (showing current attainment status) and possibly periodic modeling assessments.

preamble, may eliminate the need for source-specific FLM review in Class I areas. In its 1988 PSD regulations for NO_X, EPA applied this process to NO_X on the basis of section 166. We also propose to retain this requirement under the increment option discussed above. However, we do not interpret section 165(d)(2)(C) to require this process for NO_X regulations established under section 166. Section 165(d)(2)(C) appears to be limited by its terms to only PM and SO_2. Nevertheless, we believe we have the authority to apply this FLM review process to NO_X on the basis of section 166. However, if the requirements of section 166 are otherwise fulfilled by a cap and trade approach, we believe section 166 would give us the discretion not to employ the FLM review process described in section 165(d)(2)(C).

We are also evaluating, and request comment on, whether certain source-specific preconstruction requirements could be satisfied by a cap and trade approach. These include (1) the air quality impact analysis required under section 165(a)(6) that is codified in regulations as the additional impacts analysis (*see, e.g.*, 40 CFR 52.21(o)); (2) the analysis of air quality, climate and meteorology, terrain, soils and vegetation, and visibility required under section 165(e)(3)(B); and (3) the air quality monitoring requirement in section 165(a)(7). In the latter case, PSD applicants, where applicable, must set up air quality monitoring stations and begin collecting relevant air quality data up to 12 months in advance of their submittal of a complete PSD application.

c. What Are Some Issues That Still Need To Be Resolved?

EPA recognizes certain significant issues that still need to be resolved before a comprehensive proposal can be set forth for public review and comment. These issues are presented here for public consideration.

(1) *Failure to show ongoing statewide downward trend in NO_X emissions.* The EPA recognizes that it may not be possible to show that NO_X emissions decreases in every State from CAIR at least offset the expected contribution of NO_X emissions that non-EGU sources make in the State. Consequently, in States where the amount of NO_X reductions achieved through regulating EGUs under the proposed cap and trade program does not more than compensate for increases at other sources of NO_X, it may be difficult to justify the use of the proposed cap and trade program in lieu of the existing increment system for NO_X.

Preliminary air quality modeling by EPA indicates that total NO_X emissions will generally decline on a statewide basis across the nation. ''Total NO_X emissions'' includes contributions from electric utilities, non-utilities, area sources, and mobile sources (onroad, nonroad). As proposed, the statewide emissions budgets for NO_X apply only to affected EGUS. Sources not covered under the regional cap and trade program may face emissions limitations stemming from other Federal or State programs (*e.g.*, Federal Motor Vehicle Emissions Reduction Program) but would not typically be restricted from potential increases under any kind of cap for the source category in general.

Thus, in cases where EPA's modeling cannot initially show a downward trend in statewide NO_X emissions for a particular State because increases from another source sector are exceeding the reductions being generated by EGUS under the cap and trade program, EPA tentatively intends to announce the continued applicability of that State's increment system for NO_X as part of the final rulemaking for today's proposed action.

As part of the comprehensive modeling demonstration that EPA intends to carry out to support this cap and trade option, we will assess the likelihood that total statewide NO_X emissions will continue to exhibit a downward trend for future years. The EPA believes that it will be necessary to conduct periodic assessments (*e.g.*, 10-year intervals) of air quality trends for NO_X in order to continue justifying the cap and trade program as a substitute for the increment system for NO_X. The EPA seeks comments on the frequency of any necessary periodic assessment, as well as other possible mechanisms for determining when adjustments may need to be made to the cap and trade program to retain its viability as a replacement for the increment system or other means of preventing significant air quality deterioration for NO_X.

(2) *States in which baseline date has not been set.* While we believe, in general, that the cap and trade program would fulfill the function of the increment to prevent significant deterioration due to emissions of NO_X, we realize there are certain cases where making this showing is more complicated. The baseline against which an increment is assessed is set at the point of the first permit application submittal by a new or modified source located in the area. For areas that have not yet had the first permit application submitted, no baseline has been triggered. For such areas, it is not immediately clear that a cap and trade program is at least as effective as the existing increment program. In the case that such an area had its first permit application submitted subsequent to the realization of the emission reductions anticipated from cap and trade in that State, then an equivalency demonstration between cap and trade and the increment program becomes more complicated.

One approach for addressing this situation would be to maintain the increment program as it currently exists for States in which few or no baseline dates have been set. We request comment on this approach and any other alternatives that address this situation.

(3) *Potential for localized adverse impacts resulting from emissions increases from new and modified sources.* The EPA is mindful of the potential for localized impacts of proposed sources and modifications even where statewide emissions are shown to be declining. In response to this concern, we note that the January 30, 2004, CAIR notice of proposed rulemaking addressed the issue of localized adverse impacts. In that notice, EPA indicated that experience under the title IV Acid Rain Program shows that ''the combination of trading with a stringent emissions cap results in substantial reductions throughout the region, with the greatest reductions achieved in the areas where pollution was originally the highest.'' (69 FR 4629–30) The notice further stated that other independent analyses have supported the finding that emissions trading under this type of program has not resulted in the creation of localized air quality problems.

We believe that this trend will continue to occur as a result of the extended use of a cap and trade program, so that localized air quality problems generally will not occur. Nevertheless, there may be the potential for localized adverse impacts, especially around Class I areas, particularly when a source of NO_X locating near a Class I area is not subject to a cap. While we believe this situation is unlikely to occur and are proposing to allow States that participate in the cap and trade programs under consideration to avoid some case-by-case source impact analyses under the preconstruction review for PSD. Below, we solicit comments on whether there is any need for a limited source-specific analysis under certain circumstances.

(4) *Role of the Federal Land Manager in the PSD permit process.* The Act provides that the FLMs have an affirmative responsibility to protect any AQRVs that have been identified for the

Class I areas under their control. Section 165(d)(2)(B). Section 52.21(p) of the PSD regulations requires notification of the applicable FLM when there is a potential for adverse Class I area impacts, and it authorizes direct involvement by the FLM in cooperation with the applicable permitting authority to identify any adverse effects on any known AQRVs.

Although the cap and trade program would significantly diminish the possibility that PSD sources would adversely impact a Class I area, in light of the overall NO_X reductions that would occur, the potential for some adverse impacts could still exist. In the absence of individual source-specific air quality analyses, which include data that may be reviewed by the FLM early in the permitting process to determine the potential for adverse impacts, FLMs would have to rely upon other means of detecting such adverse impacts at a point in the permitting process when remedial action could be sought.

One possible remedy to this potential problem is for EPA to include specific criteria that, if not satisfied by a particular PSD applicant, could enable the FLM, in cooperation with the permitting authority, to call for an analysis of source impacts on the Class I area. For example, regulatory procedures could be established which authorize an FLM to call for a source impact analysis when a proposed new or modified source locates within a specified distance (*e.g.*, 150 kilometers) of a particular Class I area and air quality in the area has shown little or no improvement since the cap and trade program took effect, as determined by ambient monitoring data. The EPA seeks public input on the above example, and other possible parameters, that could offer an effective way to ensure continued protection against localized adverse impacts from source growth occurring under a cap and trade program.

(5) *States that are not affected by the proposed CAIR.* Many States are not subject to the proposed CAIR, because we believe they do not significantly contribute to nonattainment or interfere with maintenance of NAAQS in another State. The EPA solicits comments on the best way to address States that are not subject to CAIR but that wish to participate in an EPA-administered cap and trade program, or that wish to develop a State cap and trade program to replace the increment system for NO_X currently in their State PSD program. We believe that a nationwide EPA-administered cap and trade program such as the Clear Skies Initiative could replace the increment system for NO_X. If that legislation is not enacted, States that are not part of a regionally based cap and trade program could develop a State cap and trade program that could be considered to meet the goals and purposes of the Act for preventing significant deterioration of air quality due to emissions of NO_X.

C. State Planning Approach

As a third option, we propose to allow a State to submit a demonstration that its SIP contains measures, in conjunction with Federal requirements, that would prevent significant deterioration of air quality due to emissions of NO_X. Under this option, we would establish a procedure for a State to submit a SIP demonstration to EPA to fulfill the requirements of sections 166(c) and 166(d) of the Act. If EPA determines that the SIP demonstration meets the requirements of section 166, then we would approve the demonstration and allow the State to implement the SIP in lieu of an increment system for NO_X. Thus, the State planning approach, like the cap and trade approach, would provide States with an incentive to implement a program to prevent significant deterioration of air quality due to emissions of NO_X that may be more effective than an increment system.

The State planning approach will be implemented through States' SIPs. Any State choosing this option could submit a demonstration that its SIP establishes a clear planning goal, of the State's own design, to satisfy the section 166 PSD requirements for NO_X. To achieve the goal of its SIP, a State could impose NO_X emission limitations on any emissions sources it chooses, whether new or existing, or demonstrate that existing Federal and SIP limitations have the appropriate effect.

While this approach gives States more flexibility to design a program to prevent significant deterioration of air quality due to NO_X emissions using a system other than increments, the EPA review and approval process would be more time- and data-intensive. Under this approach, the State would need to provide a rigorous demonstration that its planning goal and measures (in conjunction with Federal requirements) for meeting that goal are at least as effective in preventing significant air quality deterioration for NO_X as the increments for PM and SO_2 (fulfilling the safe harbor requirement of section 166(d)) and are consistent with the criteria in section 166(c) and the goals and purpose of PSD in section 160 of the Act.

In contrast to the cap and trade option described above, under this State planning option, we are not proposing that the State must demonstrate that the SIP includes a specific type of program that we have already found to be sufficient to satisfy the requirements of section 166. However, under this State planning option, we could establish a specific planning goal that we find to be sufficient to satisfy the requirements of section 166. Thus, if the State demonstrates that its SIP achieves our recommended planning goal, this could streamline EPA action on the plan. However, if we do not establish such a goal, a State would have to define this on its own and demonstrate to EPA how a program that achieves that goal would satisfy the requirements of section 166 of the Act.

An example of a State planning goal that we believe could meet the requirements of section 166 would be a goal that statewide NO_X emissions from all sources would remain at or below the level observed in a specific baseline year that, in turn, is identified to be equivalent to the level of emissions that results in significant deterioration. A State could propose to achieve such a goal by tracking and managing the inventory of emissions from all sources in the State to ensure that statewide emissions of NO_X do not increase above this level. This approach would in effect authorize a State to replace the NO_X increment requirement by demonstrating that its SIP measures, in conjunction with Federal measures, achieve reductions in NO_X emissions from all sources that are sufficient to offset projected increases from all types of new and modified sources. We believe this approach could be an effective alternative to an increment system. This kind of a State planning approach would prevent significant deterioration of air quality due to emissions of NO_X with a goal that effectively permits no NO_X emissions increases from a specific baseline date. The State would have to track its inventory of emissions and establish control measures on all types of sources (new and existing) as appropriate to meet the goal.

1. Description of State Planning Approach

This State planning option allows States to prevent significant deterioration of air quality due to NO_X emissions through specific statewide control strategies. In developing its approach, the State may consider broad scientific research and assessment of various means of meeting air quality management goals (visibility progress, emission density requirements, or other markers).

The State planning approach may be workable for source categories such as mobile and area sources, for which a budget approach is unproven and for which the available emissions quantification techniques are too imprecise to support the budget approach. As stated before, a State may achieve its SIP goal by controlling NO_X emissions from any emissions sources it chooses. The State's control requirements, when implemented, must prevent significant deterioration of air quality due to NO_X emissions.

Under this option, a State may choose to develop its own NO_X emissions cap, with approval based on the cap's meeting the requirements of sections 166(c) and 166(d). That is, for purposes of this proposed rule, the State would not be subject to an EPA-determined NO_X budget. The State would be responsible for tracking its NO_X emissions and for identifying and reacting to needed corrections in its allowable NO_X emissions.

Under the State planning option, SIPs could include emission targets that provide for growth from new and modified sources. SIPs should be required to track actual emissions increases from new and modified sources and provide mechanisms for addressing areas that exceed these projected increases. The State is manager of the air quality resource and decides how much growth it will allow consistent with the requirement to prevent significant deterioration of air quality.

a. SIP Requirements

Under the State planning option, a State may impose NO_X emissions control requirements in the form of a NO_X emission rate limit, a specified type of technology, or even a cap on NO_X emissions. However, to demonstrate that its plan is at least as effective as the increments for PM and SO_2, the State must demonstrate through its emissions inventory that its control requirements are adequate from an air quality standpoint.

Critical to SIP planning are the elements of accountability and emissions tracking. To ensure that the SIP goal is achieved, the State planning approach requires an accurate baseline emissions estimate. Then, to demonstrate the amount of emissions control from the controlled sources, the State must take into account the amount of emissions attributable to the sources or source category both in the base case year and in the control case. The SIP must include monitoring, recordkeeping, and reporting requirements. Unlike under the cap and trade option (option 2), under the State planning option (option 3), the State must bear the responsibility for monitoring progress and tracking emissions.

The EPA is soliciting comment on what requirements are needed to ensure that the SIP goal is met. Overarching considerations include whether the requirements: (1) Provide certainty that all emissions that are controlled pursuant to this option are adequately controlled; (2) ensure that controls will continue to be adequate in future years; and (3) ensure that the control requirements can be feasibly implemented.

Pursuant to section 166(c), the State goal must provide specific numerical measures against which permit applications may be evaluated. Under option 3, we propose that each SIP demonstration must include a NO_X emissions inventory for its baseline year (1990 or other). The State will have to weigh its projected reductions against its projected increases (so as to allow for growth) over the next 10 years. Each State will need to demonstrate that the objectives of the statutory PSD program for NO_X are being met, for example, by demonstrating that NO_X increases are less than or equal to NO_X reductions at the end of a 10-year period, or by some other scheme that can accommodate significant growth of emissions, which is particularly anticipated in the western U.S. Based on the State's demonstration through statewide modeling and analysis that it will meet the SIP goal, the State would be permitted to waive some of the case-by-case analysis for new and modified major sources subject to PSD preconstruction permitting.

b. Benefits of State Planning Approach

The State planning approach could effectively serve in the same way that an increment system does to prevent significant air quality deterioration, with the added benefit of eliminating the need for certain case-by-case source analyses as currently required for sources applying for preconstruction permits under State PSD programs. Depending on how a program is designed by the State, a State planning approach could not only prevent significant air quality deterioration but, while not required to do so, also provide substantial improvements in air quality over time as any required controls are installed on sources in order to meet the State goal. For example, reductions in NO_X will contribute to visibility improvements (69 FR June 10, 2004, at 37205–6) and will also help to reduce acidification and eutrophication of water bodies (69 FR January 30, 2004, at 4642–3).

2. Using State Planning Approach in Lieu of an Increment System for NO_X

a. State Planning Approach Can Meet Requirements of Section 166 of Clean Air Act

We believe EPA's obligation under section 166 to promulgate pollutant-specific regulations for NO_X could be satisfied by permitting States to demonstrate that ''other measures'' besides increments will prevent significant deterioration of air quality due to NO_X emissions, so long as those measures are consistent with the requirements of sections 166(c) and 166(d) of the Act. The EPA could satisfy these requirements by establishing a planning goal based on the requirements of these provisions and then providing a process for States to demonstrate how the measures in their SIPs would achieve this goal.

(1) *State planning framework fulfills many of the factors applicable under section 166.* A State planning framework has many characteristics that satisfy the requirements of section 166(c), and such an approach could qualify as an ''other measure'' that is permissible under section 166(d). A State planning program framework, in combination with the specific measures in the State SIP and other Federal measures, could fulfill the requirements of sections 166(c) and 166(d).

Under a State planning framework, an emissions inventory could function as a specific numerical measure that could be used to evaluate permit applications. The inventory could be expressed in terms of a mass of total emissions (tons) across the State rather than an air quality concentration ($\mu g/m^3$) as is the case with increments and NAAQS. The State permitting authority could evaluate the permit application against the inventory of total emissions for all sources and determine if there was room in the inventory for a new source or an increase in emissions from a modified source. If so, then a preconstruction permit could be issued without causing emissions to exceed the level of the inventory. If there was not room in the inventory for emissions from a new or modified source, then the permit applicant would have to obtain offsetting reductions from other sources. This type of numerical measure could also streamline permitting because the evaluation of a permit application against an emissions inventory would be a relatively simple exercise that does not require extensive air quality modeling by the permit applicant.

A State planning framework that utilizes an emissions inventory would also stimulate improvements in control technology at both new and existing sources. In order to make room in the inventory for growth from new sources or modifications to existing sources, a State may elect to establish additional control measures on existing sources. This would stimulate improvements in control technology at those sources. However, a State might instead elect to require that new and modified sources bear a greater burden of controlling emissions and thus stimulate these sources to make improvements in control technology. Major new and modified sources would still have to install BACT under this option, but the State could also establish limitations that give minor sources incentive to employ improved control technology to keep emissions below the inventory. A State could also develop some combination of these approaches that balances the burdens across new and existing sources. Thus, a State planning approach of this nature would stimulate improvements in control technology while also providing the States with the flexibility to identify the sources in that State that can most cost-effectively install improved controls.

A State planning framework could also address the goal in section 160(4) of the Act to assure that emissions in one State do not interfere with the PSD program in another State. The EPA could adopt this goal as a criterion that must be met in order for the State planning process to prevent significant deterioration of air quality due to emissions of NO_X. Thus, in addition to showing that emissions would not exceed the inventory, States might have to demonstrate that their SIPs will not cause the inventory to be exceeded in neighboring or downwind States. The EPA would not approve a SIP that does not meet this goal and could thereby ensure that emissions from upwind States are effectively managed to prevent significant deterioration of air quality in other States. This goal is to a large extent already embodied in the State planning process based on section 110(a)(2)(D)(i)(II) of the CAA. This section requires that SIPs contain adequate provisions to prohibit emissions from any source from interfering with the part C (PSD) program in another State. Thus, we may not need to make any changes to our SIP planning regulations to satisfy the section 160(4) goal if we allowed States to use the State planning approach to satisfy section 166 of the Act.

With respect to the PSD goal in section 160(5) that any decision to increase air pollution be made only after careful evaluation and public participation, the evaluation would be conducted and opportunities for public participation would occur under the State's planning approach when the baseline year for the statewide emissions inventory is proposed. The EPA or the State would conduct a careful evaluation at that time and provide an opportunity for public comment. Once the inventory baseline is established, it will guide future permit evaluations. If a project subject to the permit requirement would not cause statewide emissions to exceed this level, the permit could be issued without as extensive a review at the permitting stage as would be required under the increment system. The careful evaluation conducted at the time the baseline year is selected will have already established whether an emissions increase could be allowed without preventing significant deterioration of air quality. In addition, major sources will still need to obtain permits and achieve BACT, so there would continue to be some case-by-case review and public participation under a State planning framework.

To satisfy the minimum requirements of section 166(d) under the ''contingent safe harbor'' approach, the baseline inventory selected for a State planning program would have to represent a level that is at least as effective as the increments for PM and SO_2. As discussed above, these statutory increments were established as a percentage of the NAAQS, which are expressed as a concentration of air pollution. To make a quantitative showing that the mass-based emissions inventory is as effective as the concentration-based increments for PM and SO_2, EPA or the States (depending on who establishes the inventory) could conduct ambient air quality modeling to predict the statewide concentrations of NO_2 achieved by maintaining the inventory of emissions at a specific level. The EPA or the State might then be able to show that the selected emissions inventory will maintain NO_2 concentrations within a certain percentage of the ambient concentrations of NO_2 as of the applicable baseline date (or dates) in the area. We request comment on whether there are other equally effective approaches (both qualitative and quantitative) that we might use to show that maintaining statewide emissions at a specific level is at least as effective as the increments for PM and SO_2.

The statewide emissions level that is as effective as the increments for PM and SO_2 would represent the ''safe harbor'' under the contingent safe harbor interpretation of section 166 of the Act. Once the safe harbor level is identified in this manner, we would conduct further review to determine whether it satisfies the requirements of section 166(c) by using the same balancing test discussed above. We would use this balancing test to determine whether an emissions level other than the ''safe harbor'' level should be maintained to protect air quality values, public health and welfare, and parks and other special areas, while also ensuring economic growth consistent with the preservation of existing clear air resources.

(2) *A SIP that allows no increase in total NO_X emissions above 1990 levels could satisfy section 166 requirements.* To achieve both the environmental protection and the economic growth goals of the PSD program in our pollutant-specific PSD regulations for NO_X, we propose, under this State planning option, to establish a goal that the State maintain an emissions inventory for NO_X emissions at the levels observed in 1990. The year 1990 is one for which we have developed sound NO_X emissions inventories for all States as a result of our work on the CAIR proposal. We propose the use of this year based in part on an assumption that the NO_2 increment baseline date (*i.e.*, minor source baseline date) has already been set as of that year, for all or most of the State. Relying on this assumption, we generally believe that by maintaining statewide NO_X emission levels at 1990 levels, many States could prevent significant deterioration of air quality due to emissions from NO_X and protect AQRVs, health and welfare, and parks and other special areas, while also ensuring economic growth, although a specific statewide demonstration would still need to be submitted to EPA in each case.

The EPA recognizes that in some States, using a 1990 baseline inventory for NO_X may not represent a measure at least as effective as the increments under a SIP planning approach, even though NO_X emissions reductions are achieved and air quality improvements result in subsequent years when the NO_2 increment baseline concentration date has not yet been set for all or most areas in the State. Until the baseline date is set for most of the State, reductions in ambient concentrations of NO_2 would be counted as part of the baseline concentration and would not affect the amount of NO_2 increment. Reductions of NO_X emissions in the years following 1990 would result in lower ambient concentrations of NO_2 and thus result in a lower NO_2

increment baseline concentration. Maintaining NO_X emissions at a 1990 level when the NO_2 increment baseline had not yet been set could allow for higher ambient NO_2 concentrations than would be allowed by adding the NO_2 increment to a lower NO_2 baseline concentration. For this proposal, EPA believes that it is necessary for the baseline date to have already been set by 1990 in most areas of the State in order for the State to use the 1990 NO_X inventory as its baseline NO_X inventory.

While we are proposing a 1990 baseline emissions inventory date, we believe it is possible for a State to choose a different baseline year that would accomplish the same objective. Therefore, we also solicit comment on how much flexibility States should be given in selecting a baseline year under this State planning option.

(3) *State planning approach satisfies ambient air quality review requirements.* If we permit States to employ a State planning framework in lieu of NO_2 increments to meet the requirements of section 166 for NO_X, we believe it will no longer be necessary for sources to conduct a site-specific ambient air quality analysis for NO_2 to comply with the requirements of section 165(a)(3) of the Act. If there is room under a properly derived emissions inventory for a particular new or modified source, it will already be clear that the source will not cause or contribute to air pollution in excess of the NAAQS. Before the permit is evaluated, EPA or the State will have already performed an ambient air quality analysis across the State to show that holding NO_X emissions at the chosen level is sufficient to prevent significant deterioration of air quality or avoid an exceedance of the NO_2 NAAQS. The statewide emissions level would fill the role of the increment, so section 165(a)(3) would be satisfied without a source-specific showing that a source's proposed emissions increase does not cause or contribute to air pollution increases in excess of the increment. The permit applicant would only need to show that there is room in the State's emissions inventory for its emissions. As with the cap and trade approach discussed above, it would become redundant and unnecessarily costly in many respects to require an individual source to conduct a site-specific air quality analysis if EPA or the State has already established that maintaining emissions at a specific level does not cause air pollution to exceed standards and meets the goals and purposes of PSD and the requirements of section 166.

b. Using a State Planning Approach To Streamline the PSD Permitting Process

If a State makes the necessary demonstration under this option, we would not require the State to implement some of the existing PSD preconstruction permitting requirements for NO_X. A source-specific ambient air quality, increment, and NAAQS analysis would not be required, as described in the above subsection. However, as with the cap and trade program option described above, we do not propose for this State planning approach to replace all aspects of the PSD permitting process.

All new major stationary sources and major modifications would still have to obtain a permit prior to commencing construction on new projects that result in a significant net emissions increase for NO_X. These sources will also have to comply with emissions limitations based on BACT. As discussed above, BACT is required under section 165(a)(4) of the Act, not section 166. We do not believe this source-specific technology requirement can be fulfilled through alternative means under a State planning approach.

We request comment on whether other elements of the preconstruction analysis would remain necessary under this approach. If a State can maintain NO_X emissions at levels that prevent significant deterioration of air quality, this might also eliminate the need for source-specific FLM review in Class I areas. *See* 40 CFR 52.21(p). As discussed above in the cap and trade option, we propose to interpret the Act not to require this process for NO_X but to permit EPA in its discretion to require the process, as necessary, to meet the requirements of section 166. To the extent the State planning goal protects AQRVs, this process may not be necessary under this option for NO_X. We also request comment on whether the additional impacts analysis (*see* CAA 165(a)(6) and 40 CFR 52.21(o)) could be performed through the State planning process and then not be required on each individual permit application. For the reasons discussed above, we request comment on whether, under this State planning option, it would be necessary to continue to require applicants to collect pre-application air quality monitoring data over a 12-month period preceding the submittal data of an application. We believe that this kind of data may need to be gathered by the State in order to demonstrate that a SIP planning goal meets the PHS requirements.

c. What Are Some Issues That Still Need To Be Resolved?

EPA recognizes certain significant issues that still need to be resolved before a comprehensive proposal can be set forth for public review and comment. These issues are presented here for public consideration. The EPA will review the comments submitted and present its findings in a supplemental notice in the future if the Agency intends to continue to pursue this option.

(1) *Failure to maintain statewide NO_X emission at a level that prevents significant deterioration of air quality.* The EPA recognizes that it may not be possible for every State to maintain its inventory of statewide total NO_X emissions as necessary to ensure prevention of significant deterioration of air quality due to emissions of NO_X. For example, this could occur where, over a period of time, the statewide NO_X emissions from uncapped sources substantially exceed the NO_X reductions achieved by regulating a specific group of sources. Also, unanticipated growth in a particular industry could cause a State's projection of NO_X emissions for a particular source category to be exceeded. Consequently, in those States, it may be difficult to demonstrate the use of the State planning option as a substitute for the increment system for NO_X. As stated earlier, it is the obligation of the State to demonstrate that the objectives of the statutory PSD program for NO_X are being met, whether or not NO_X emissions remain below the baseline at the end of a 10-year period.

As part of the demonstration that States must make to support the State planning option, the State will have to make a comprehensive showing that total statewide NO_X emissions will continue to prevent significant deterioration for future years. The EPA believes that it will be necessary for the State to conduct periodic assessments (*e.g.*, 10-year intervals) of NO_2 air quality trends for NO_X in order to continue justifying the SIP as a substitute for an increment system to prevent significant deterioration of air quality due to emissions of NO_X. The EPA seeks comments on the frequency of any necessary periodic assessment, as well as other possible mechanisms for determining when adjustments may need to be made to a SIP that does not employ an increment system to prevent significant deterioration of air quality due to emissions of NO_X.

(2) *Potential for localized adverse impacts resulting from NO_X emissions increases from new and modified sources.* We recognize the possibility

under this proposed State planning option that sources may have potentially adverse localized impacts even when fulfilling statewide NO_X emissions requirements. A related concern arises if not all source categories are subject to the statewide NO_X emissions requirements under this option.

Thus, while we are tentatively considering allowing States to avoid the need under their PSD rules to require case-by-case source impact analyses (including the process of involving FLMs) under the preconstruction review for PSD, we are at the same time soliciting comments on how to address the potential problem of localized adverse impacts. We believe the approach described under the cap and trade option could readily apply under the State planning option as well. That is, regulatory procedures could be established that would authorize the permitting authority (or FLM, in the case of a Class I area impact) to call for some type of source impact analysis when a proposed source locates within a specified distance of an area of concern, and the air quality in that area has shown little or no improvement since the State's planning approach took effect. We solicit comments on this and other possible ways of addressing this potential problem.

(3) *Additional measures under a SIP.* We believe the SIP under the State planning option will have to include additional measures toward NO_X emissions control and/or a fall-back increments program. A backstop for the State planning option might involve a margin of progress. The SIP would contain provisions for additional reductions or NO_2 increments if the margin of progress is exceeded. For example, if a State's NO_X emissions rate (tons per year) increases such that it is within 5 percent of the baseline rate, then the State would be obliged to employ the additional measures in its SIP to correct its NO_X emissions. We solicit comment on whether States under option 3 should be required to continue to track NO_2 increment consumption for new and modified sources.

VII. Other Alternative Considered

As noted above, under section 166(d) of the Act, the regulations to fulfill the objectives of the statutory program for PSD ''may contain air quality increments, emission density requirements, or other measures,'' provided such measures are at least as effective as the increments for SO_2 and PM. Our proposed options, including option 2 (cap and trade approach) and option 3 (State planning approach), are such measures. The State planning option gives States broad discretion in designing their own approaches for satisfying PSD requirements.

EPA is not proposing to utilize ''critical load'' as the basis for a regulatory measure to prevent significant deterioration of air quality due to emissions of NO_X at this time, given that the science is still being developed for the concept. The EPA recognizes, however, that a State may choose to utilize a critical load concept as part of its air quality management approach to meet its broader air quality goals. Thus, if a State proposes to use such a concept, considering the state of the science and its developments over time, to satisfy the State's overall air quality goals, EPA would consider it when determining whether a State's approach satisfies PSD requirements. The EPA believes that a State might choose to pursue this concept under a State planning option.

The National Park Service (NPS) has been focusing on the concept of a ''critical load'' to assess the risk to park ecosystems from atmospheric deposition. Critical loads can be defined as ''quantitative estimates of an exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge'' (1995 Staff Paper at xi–xii). In its 1995 report entitled ''Acid Deposition Standard Feasibility Study: Report to Congress,'' EPA noted that critical loads had been developed in other countries and that, in the U.S., several States had developed critical loads for acid deposition, expressed as deposition rates for sulfur. Only in California had critical loads been established for nitrogen as recommendations to protect certain sensitive California resources (1995 Staff Paper at 53–55).

Ecosystems research over the last few decades has produced findings that may be sufficient to identify changes to sensitive elements of the environment resulting from exposure to atmospheric nitrogen in its various forms. In some cases, the available scientific literature has indicated the possibility of estimating levels of exposure at which a particular adverse impact will result.

For exposure to nitrogen, deposition critical load determinations are based on indicators of harmful ecological change that include episodic and chronic acidification of streams and rivers, chemical changes in soils and vegetation, nutrient enrichment and eutrophication, and shifts in plant species composition. A more detailed description of these types of adverse effects is contained in section V of this preamble. Nitrogen critical load thresholds are expressed in kilograms or equivalents of nitrogen deposited per hectare per year. Federal Land Managers are beginning to evaluate the European approach for ecosystem assessment that uses the concept of critical loads.

Nitrogen impacts have been documented in areas ranging from East Coast estuaries to southern California chaparral communities. These impacts are found in diverse ecological communities ranging from fisheries to grasslands to lichens. At a given location, different critical loads can be developed for different ecosystem changes (*e.g.*, the loading at which episodic acidification begins to occur may be different than the loading at which plant species shifts occur in the same area).

As noted above, a State may wish to identify a critical load level for nitrogen in order to develop a ''target load'' aimed at addressing a harmful ecosystem change, or preventing it in places where the critical load has not yet been reached as part of an air quality management approach. For areas where the critical load has already been exceeded, a State could establish, as part of such an approach, a target load higher than the critical load, as a progress goal towards the critical load. The target load could then be used to establish emissions goals through deposition modeling. The State might then choose to use efficient management mechanisms, such as cap and trade programs or regional emission control strategies, to ensure that target loads are not exceeded.

As noted above, if a State wishes to pursue such an approach as part of its air quality management program, the Agency would work with the State to determine whether the approach would satisfy PSD requirements. In determining whether a State's approach satisfies PSD requirements, EPA will also consider other measures already established in a State's SIP. To the extent a State program focused on critical loads is needed to satisfy PSD requirements, it would also need to be incorporated into the SIP.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of

Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because the cap and trade and State planning options in the proposal raise novel legal and policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Under the proposed action, one option is to retain the existing increments and regulatory framework of the PSD regulations for NO_X. If the proposed action results in our retaining the existing increments program, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0003, EPA ICR number 1230.17. A copy of the OMB-approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

Under the second and third options of the proposal, we are proposing to allow States to implement alternative programs to the NO_2 increments. Option 2 would permit a State to implement a cap and trade program. Option 3 would permit a State to demonstrate that its SIP requirements satisfy the objectives of the PSD program. As presently constructed, the proposed options do not impose any new information collection burden on the States or regulated industries. If the proposed action results in our adopting the second or third options, then we will be publishing a supplemental notice and will at that time identify any changes in information collection requirements.

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.

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.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden or otherwise has a positive economic effect on all of the small entities subject to the rule. The proposed rule will not impose any requirements on small entities and in fact may relieve some small entities of certain permit-related expenses. Under option 1 of the proposal, we would retain existing regulations without change and thus impose no new requirements. Under options 2 and 3 of this proposal, we propose to allow States to adopt alternative programs to relieve the burden of conducting specific ambient air quality and increment analyses under the PSD program. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative

was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Under option 1 of the rule, we propose to retain existing requirements and do not impose any new Federal mandates. States are not required to adopt the approaches set forth in options 2 and 3 of the rule, which may provide relief from some existing requirements. In any event, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or in the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. If the existing regulations for increments are retained under option 1, no new regulatory requirements will be imposed on States. Options 2 and 3 of the proposal would permit States to obtain relief from certain regulatory requirements by adopting alternative programs but do not require adoption of those programs. Furthermore, the cap and trade option of this proposed rule does not impose any requirements but rather allows States to obtain regulatory flexibility by implementing the requirements of another rule. Direct compliance costs associated with today's proposed rule could be incurred when States incorporate any changes into their State implementation plans, but these direct compliance costs would not be significant. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed action, whether to retain existing regulations or to obtain regulatory flexibility by choosing to implement an alternative program, does not impose any new regulatory restrictions. Thus, Executive Order 13175 does not apply to this proposed rule. The EPA specifically solicits additional comment on the proposed rule from tribal officials.

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency 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 the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks of NO_X addressed by this action present a disproportionate risk to children. Option 1 of the proposed rule is to retain existing regulations and does not impose any new regulatory requirements. Options 2 and 3 of the proposed rule would permit States to obtain relief from certain regulatory requirements by adopting alternative programs but do not require adoption of those programs. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to NO_X.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Option 1 of the proposed rule is to retain existing regulations and does not impose any new regulatory requirements. Options 2 and 3 of the proposed rule may provide relief from certain regulatory requirements if States adopt alternative programs. The cap and trade option (option 2) of this proposed rule does not impose any requirements but rather allows States to obtain regulatory flexibility by implementing the requirements of another rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The

NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. The EPA welcomes comments on this aspect of the proposed rulemaking and specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Parts 51 and 52

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate Matter, Reporting and recordkeeping requirements.

Dated: February 14, 2005.

Stephen L. Johnson,

Acting Administrator.

References

Allen, E.B., P.E. Padgett, A. Bytenerowicz, R. Minnich, 1998. ''Nitrogen Deposition Effects on Coastal Sage Vegetation of Southern California.'' Expanded version of presentation at the International Symposium on Air Pollution and Climate Change Effects on Forest Ecosystems, Riverdale, CA, February 5–9, 1996. USDA Forest Service Gen. Tech. Rep. Pacific Southwest Research Station, PSW–GTR–166, p. 131–139. 1998.

Bowman, W.D., 2000. ''Biotic Controls over Ecosystem Response to Environmental Change in Alpine Tundra of the Rocky Mountains.'' Ambio, vol. 29, no. 7 (p. 396–400), November 2000.

Butler, T.J., G.E. Likens, and B.J.B. Stunder, ''Regional-scale Impacts of Phase I of the Clean Air Act Amendments in the USA: the Relation Between Emissions and Concentrations, Both Wet and Dry.'' Atmospheric Environment, vol. 37 (p. 1015–1028), 2000. *http://www.sciencedirect.com/science/journal/13522310*.

Butler, T.J., G.E. Likens, F.M. Vermeylen, and B.J.B. Stunder, ''The Relation Between NO_x Emissions and Precipitation NO_3^- in the Eastern USA.'' Atmospheric Environment, vol. 37 (p. 2093–2104), 2003. *http://www.sciencedirect.com/science/journal/13522310*.

Dahlgreen R.A., J.M. Holloway, ''Geologic Nitrogen as a Non-point Source of Nitrate in Natural Waters.'' Soil Science: Confronting New Realities in the 21st Century (World Congress of Soil Science); 17th WCSS, 14–21 August 2002; Symposium no. 6, paper no. 83. *http://www.sfst.org/Proceedings/17WCSS_CD/papers/0083.pdf*.

Driscoll, C.T., G.B. Lawrence, A.J. Bulger, T.J. Butler, C.S. Cronan, C. Eagar, K.F. Lambert, G.E. Likens, J.L. Stoddard, and K.C. Weathers, ''Acid Rain Revisited: Advances in Scientific Understanding Since the Passage of the 1970 and 1990 Clean Air Act Amendments.'' Hubbard Brook Research Foundation Science Links' Publication. Vol. 1, no. 1, 2001.

Fenn, M.E., M.A. Poth, J.D. Aber, J.S. Baron, B.T. Bormann, D.W. Johnson, A.D. Lemly, S.G. McNulty, D.F. Ryan, and R. Stottlemyer, 1997. ''Nitrogen Excess in North American Ecosystems: Predisposing Factors, Ecosystem Responses, and Management Strategies.'' Ecological Applications, vol. 8, no. 3 (p. 706–733), August 1998.

Fenn, M.E., R. Haeuber, G.S. Tonnesen, J.S. Baron, S. Grossman-Clarke, D. Hope, D.A. Jaffe, S. Copeland, L. Geiser, H.M. Rueth, and J.O. Sickman, ''Nitrogen Emissions, Deposition and Monitoring in the Western United States.'' BioScience, vol. 53, no. 4 (p. 1–13), April 2003.

National Oceanic and Atmospheric Administration. (2004) AIRMon Dry Deposition. Air Resources Laboratory. *http://www.arl.noaa.gov/research/projects.airmon_dry.html;* August 5, 2004.

National Science and Technology Council. (1998) NAPAP Biennial Report to Congress: An Integrated Assessment. National Acid Precipitation Assessment Program. May 1998.

U.S. Department of the Interior, ''Air Quality in the National Parks: Second Edition.'' September 2002.

U.S. Environmental Protection Agency. (1993) Air Quality Criteria for Oxides of Nitrogen. (3 volumes). Office of Air Quality Planning and Standards. EPA–600/8–91/049aF–cF, August 1993. Available at Docket No. AR–95–01.

U.S. Environmental Protection Agency. (1995) Review of the National Ambient Air Quality Standards for Nitrogen Dioxide: Assessment of Scientific and Technical Information. (OAQPS Staff Paper.) Office of Air Quality Planning and Standards. EPA–452/R–95–005, September 1995. *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_pr_sp.html*.

U.S. Environmental Protection Agency. (1995) Acid Deposition Standard Feasibility Study: Report to Congress. Office of Air and Radiation. EPA 430–R–95–001a, October 1995. Available at Docket No. AR–95–01.

U.S. Environmental Protection Agency. (1997) Nitrogen Oxides: Impacts on Public Health and the Environment. Office of Air Quality Planning and Standards. EPA 452/R–97–002, August 1997.

Wang, X., ''Aluminum Mobilization from the Forest Land.'' The Roosevelt Wild Life Station. State University of New York; College of Environmental Science and Forestry. *http://www.esf.edu/resorg/rooseveltwildlife/Research/Al/Al.htm; July 28, 2004.*

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Vol. 70, No. 35

Wednesday, February 23, 2005

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5043–5348 1
5349–5542 2
5543–5914 3
5915–6312 4
6313–6550 7
6551–6762 8
6763–6994 9
6995–7164 10
7165–7378 11
7379–7632 14
7633–7838 15
7839–8020 16
8021–8228 17
8229–8500 18
8501–8708 22
8709–8918 23

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6641 (see Proc. 7870) 7611
7866 6545
7867 6547
7868 6995
7869 6997
7870 7611

Executive Orders:
12947 (Amended by EO 13372) 8497
13099 (See EO 13372) 8497
13224 (Amended by EO 13372) 8497
13268 (See EO 13372) 8497
13284 (See EO 13372) 8497
13372 8497

Administrative Orders:
Memorandums:
Memorandum of February 9, 2005 7631
Presidential Determinations:
No. 2005-19 of January 27, 2005 6549
No. 2005-20 of February 10, 2005 8499

5 CFR

Ch. XCVII 5272
5501 5543
5502 5543
9701 5272

Proposed Rules:
Ch. LXXXI 7192
Ch. XCIX 7552
9901 7552

7 CFR

226 8501
272 6313
275 6313
301 7379
319 ..... 6999, 8229
770 7165
810 8233
905 5915
923 6999
929 7633
930 7645
932 6323
979 8709
984 7002
985 8712
989 6326
1260 7004
1463 7007
1700 5349
1709 5349
1944 7650
3550 6551
3560 8503

Proposed Rules:
170 8040
300 6596
301 6596
923 6598
932 8545
946 7437
993 5944
1033 8043
1700 5382
1709 5382

9 CFR

53 6553
71 6553
78 7839
93 6083
94 ..... 5043, 6083
95 6083
96 6083
327 6554

10 CFR

824 8716

Proposed Rules:
2 7196
30 7196
40 7196
50 7196
52 7196
60 7196
63 7196
70 7196
71 7196
72 7196
73 7196
76 7196
150 7196
170 8678
171 8678
431 7673
490 7442

11 CFR

110 5565

Proposed Rules:
109 5382
300 ..... 5382, 5385

12 CFR

30 6329
201 6763
229 ..... 7379, 8716
271 7839
272 7839
281 7839

Proposed Rules:
Ch. I 5571

Ch. II.....5571
Ch. III.....5571
Ch. IV.....5571
Ch. VII.....5946

13 CFR

125.....5568

14 CFR

13.....8236
14.....8236
25.....7800
39 .....5361, 5365, 5367, 5515, 5917, 5920, 7014, 7016, 7017, 7167, 7174, 7381, 7382, 7384, 7386, 7389, 7390, 7841, 7845, 7847, 7851, 8021, 8025, 8028, 8239, 8241, 8504, 8507
71 .....5370, 6334, 6335, 6336, 7020, 7021, 7392, 8432
95.....6337, 7358
97.....6338, 8243
119.....5518, 7392
121.....5518
129.....5518
135.....5518
183.....5518
234.....7392

Proposed Rules:

21.....7830
25.....6598
39 .....5064, 5066, 5070, 5073, 5076, 5078, 5081, 5387, 5390, 6782, 6786, 7052, 7056, 7057, 7059, 7061, 7063, 7217, 7443, 7446, 7674, 7676, 7678, 7681, 7683, 7687, 7689, 7691, 7693, 7695, 7697, 7700, 8303, 8547, 8549
71 .....6376, 6378, 6379, 6381, 6601
91.....7830
241.....8140
249.....8140
375.....6382

15 CFR

730.....8245
736.....8718
738.....8245
740.....8245, 8251
748.....8245
752.....8718
756.....8245
764.....8245, 8718
766.....8245
772.....8245
774.....8245
902.....7022

Proposed Rules:

30.....8200
922.....7902

17 CFR

1.....5923, 7549
155.....5923, 7549
201.....7606
228.....6556
229.....6556
232.....6556, 6573
240.....6556
249.....6556
270.....6556

Proposed Rules:

1.....5577

18 CFR

5.....8720
16.....8720
35.....8253
156.....8720
157 .....6340, 8269, 8720
385.....8720

19 CFR

162.....8509
206.....8510
207.....8510

20 CFR

416.....6340

21 CFR

1.....8726
172.....8032
173.....7394
510.....8289
520.....8289, 8513
522.....6764, 8290
524.....8290
1310.....5925
1313.....5925

Proposed Rules:

1308.....7449

22 CFR

22.....5372
41.....7853

Proposed Rules:

51.....8305

24 CFR

570.....8706

Proposed Rules:

1000.....8674

26 CFR

1 .....5044, 7176, 8727, 8729
301.....7396
602.....7396

Proposed Rules:

1.....5948, 8552

27 CFR

Proposed Rules:

9 .....5393, 5397, 6792

28 CFR

Proposed Rules:

904.....8048
907.....8050

29 CFR

1910.....8291
4022.....7651
4044.....7651

Proposed Rules:

2520.....6306

30 CFR

250.....7401
926.....8002
948.....6575

Proposed Rules:

250.....7451
206.....8556
913.....6602
915.....6606

31 CFR

50.....7403

33 CFR

100.....5045
117 .....5048, 6345, 7024, 7405, 7653, 8514, 8515, 8730
165 .....5045, 5048, 5050, 6347, 6349, 7653, 7655

Proposed Rules:

100.....7702
117.....8751
165 .....5083, 7065, 8309
167.....7067, 8312

36 CFR

Proposed Rules:

1253.....6386

37 CFR

1.....5053
202.....7177

38 CFR

17.....5926

Proposed Rules:

36.....8472

39 CFR

111.....5055
551.....6764

Proposed Rules:

3001.....7704

40 CFR

9.....6351
52 .....5377, 5927, 5928, 6352, 6591, 7024, 7038, 7041, 7407, 7657, 8291, 8516, 8518, 8520, 8878
60.....8523
63.....6355, 6930
81 .....5057, 6361, 6591
180 .....7854, 7861, 7864, 7870, 7876, 7886, 7895
239.....7658
258.....7658
271.....6765, 8731
180.....7044, 7177
300.....5930, 7182
442.....5058

Proposed Rules:

51.....5593, 8880
52 .....5085, 5399, 6387, 6796, 7069, 7455, 7904, 8557, 8880
60.....8314
63.....6388, 6974
70.....7905
71.....7905
81.....7081
82.....8753
122.....5093
136.....7909
141.....7909
155.....5400
180.....7912
261.....6811
271.....6819, 8756
300 .....5949, 7455, 7708
442.....5100

41 CFR

Ch. 301 5932

42 CFR

Proposed Rules:

400.....6184
405.....6140, 6184
410.....6184
412.....5724, 6184
413.....6086, 6184
414.....6184
423.....6256
441.....6086
482.....6140
486.....6086
488.....6140, 6184
494.....6184
498.....6086

44 CFR

64.....6364, 8534
65.....5933, 5936
67 .....5937, 5938, 5942

Proposed Rules:

67 .....5949, 5953, 5954, 5956

46 CFR

501.....7659
502.....7659
515.....7659

Proposed Rules:

381.....7458

47 CFR

0.....6593
1.....6771
2.....6771
15.....6771
22.....6761
25.....6771
54.....6365
64.....8034
73 .....5380, 5381, 7189, 8535, 8536
76.....6593
90.....6758, 6761
301.....6776

Proposed Rules:

54.....6390
73 .....7219, 7220, 7221, 8054, 8332, 8333, 8334, 8335, 8558, 8559

48 CFR

205.....8536
219.....6373
225.....6374, 8537
228.....8537
229.....6375, 8538
246.....8539
Ch. 12.....6506

Proposed Rules:

225.....8560
237.....8562, 8563
239.....8564
241.....8565, 8566
250.....6393
252.....8560, 8563

49 CFR

Ch. I.....8299
1.....7669, 8299
173.....7670
194.....8734
214.....7047
303.....7411
555.....7414
567.....7414
568.....7414
571.....6777, 7414
Ch. XI.....8299

1562.....7150
Proposed Rules:
Subt. A.....8756
173.....7072
385.....5957
390.....5957
395.....5957
571.....7222
605.....5600

50 CFR

17.....8037
32.....8748
229.....6779
622 .....5061, 5569, 8037
648 .....7050, 7190, 8543
660.....7022, 8544
679 .....5062, 6781, 7900, 7901, 8749
Proposed Rules:
17 .....5101, 5117, 5123, 5401, 5404, 5959, 6819, 7459
21.....6978
226.....6394
300.....6395
622.....5128
648.....6608

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 23, 2005

COMMERCE DEPARTMENT

Industry and Security Bureau

Export Administration regulations:

Denied persons list and specially designated nationals and blocked persons list; removal from loose-leaf version; published 2-23-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

Suisun Bay, Concord, CA; security zone; published 1-24-05

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Buena Vista Lake shrew; published 1-24-05

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Mergers of federally-insured credit unions; voluntary termination or conversion of insured status; communication and disclosure requirements; published 1-24-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

GARMIN International Inc.; published 1-19-05

Gulfstream; published 2-16-05

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Net unrealized built-in gain; adjustment; published 2-23-05

Safe harbor sale and leaseback transactions; uniform capitalization of interest expense; published 2-23-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Milk marketing orders:

Arizona-Las Vegas; comments due by 2-28-05; published 12-30-04 [FR 04-28630]

Onions grown in—

South Texas; comments due by 2-28-05; published 12-30-04 [FR 04-28631]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

National School Lunch, School Breakfast, and Special Milk Programs; procurement requirements; comments due by 2-28-05; published 12-30-04 [FR 04-28532]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Grants:

Assistance to high energy cost rural communities; comments due by 3-4-05; published 2-2-05 [FR 05-01879]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic herring; comments due by 3-2-05; published 1-31-05 [FR 05-01744]

Monkfish; comments due by 3-3-05; published 1-3-05 [FR 04-28738]

Monkfish; correction; comments due by 3-3-05; published 1-12-05 [FR 05-00625]

Marine mammals:

Commercial fishing authorizations—

Fisheries categorized according to frequency of incidental takes; 2005 list; comments due by 3-4-05; published 1-5-05 [FR 05-00214]

Meetings:

Gulf of Mexico Fishery Management Council; comments due by 3-4-05; published 2-1-05 [FR 05-01800]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Army Department

Freedom of Information Act Program; implementation; comments due by 2-28-05; published 12-28-04 [FR 04-27848]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Federal Acquisition Regulation (FAR):

Free trade agreements—

Australia and Morocco; comments due by 2-28-05; published 12-28-04 [FR 04-28400]

EDUCATION DEPARTMENT

Special education and rehabilitative services:

Individuals with Disabilities Education Act (IDEA)—

Regulatory issues; comments due by 2-28-05; published 12-29-04 [FR 04-28503]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

Electric utilities (Federal Power Act):

Generator interconnection agreements and procedures; large wind generation; comments due by 3-2-05; published 1-31-05 [FR 05-01693]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Michigan; comments due by 2-28-05; published 1-28-05 [FR 05-01633]

Missouri; comments due by 3-4-05; published 2-2-05 [FR 05-01992]

Washington; comments due by 3-3-05; published 2-1-05 [FR 05-01867]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:

Georgia; comments due by 2-28-05; published 1-27-05 [FR 05-01531]

Radiation protection programs:

Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability—

Hanford Central Characterization Project; comments due by 2-28-05; published 1-12-05 [FR 05-00618]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Interconnection—
Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]
Satellite communications—
Multichannel video programming distribution market; competition; review of rules and statutory provisions; comments due by 3-1-05; published 2-8-05 [FR 05-02267]

Radio stations; table of assignments:
California; comments due by 3-3-05; published 1-26-05 [FR 05-01356]
Maryland; comments due by 3-3-05; published 1-26-05 [FR 05-01369]
Vermont and New York; comments due by 3-3-05; published 1-26-05 [FR 05-01358]

FEDERAL ELECTION COMMISSION

Bipartisan Campaign Reform Act; implementation:
Levin funds; disbursement by State, district, and local party committees; de mininimis exemption; comments due by 3-4-05; published 2-2-05 [FR 05-01891]
Non-Federal funds or soft money and coordinated and independent expenditures; agent definition; comments due by 3-4-05; published 2-2-05 [FR 05-01892]

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:
Federal Procurement Data System; direct access by non-governmental entities; comments due by 2-28-05; published 12-28-04 [FR 04-28280]
Federal Acquisition Regulation (FAR):
Free trade agreements—
Australia and Morocco; comments due by 2-28-05; published 12-28-04 [FR 04-28400]

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration

Child Support Enforcement Program:
Child support orders review and adjustment; reasonable quantitative standard; comments due by 2-28-05; published 12-28-04 [FR 04-28410]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services

Medicare:
Medicare+Choice program; managed care provisions; correction; comments due by 2-28-05; published 12-30-04 [FR 04-28155]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration

Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT
Coast Guard

Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Ports and waterways safety:
Fifth Coast Guard District; safety zone; comments due by 2-28-05; published 12-28-04 [FR 04-28228]
St. Croix, U.S. Virgin Islands; security zones; comments due by 3-3-05; published 2-1-05 [FR 05-01754]

HOMELAND SECURITY DEPARTMENT

Nonimmigrant classes:
Aliens—
H-2B Program; one-step application process for U.S. employers seeking workers to perform temporary labor or services; comments due by 2-28-05; published 1-27-05 [FR 05-01240]

INTERIOR DEPARTMENT
Fish and Wildlife Service

Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

LABOR DEPARTMENT
Employment and Training Administration

Aliens; temporary employment in U.S.:
H-2B petitions in all occupations other than excepted occupations; post-adjudication audits; comments due by 2-28-05; published 1-27-05 [FR 05-01222]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Free Trade Agreements—
Australia and Morocco; comments due by 2-28-05; published 12-28-04 [FR 04-28400]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

POSTAL RATE COMMISSION

Rules of practice and procedure:
First use of rules applicable to negotiated service agreements; request for comments; comments due by 2-28-05; published 1-31-05 [FR 05-01732]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States

Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Air travel; nondiscrimination on basis of disability:
Regulation update, reorganization, and clarification; statutory requirement to cover foreign air carriers; comments due by 3-4-05; published 1-28-05 [FR 05-01562]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:
Aerospatiale; comments due by 3-3-05; published 2-1-05 [FR 05-01809]
Airbus; comments due by 3-2-05; published 1-31-05 [FR 05-01725]
Bell Helicopter Textron Canada; comments due by 3-4-05; published 1-3-05 [FR 04-28628]
Boeing; comments due by 2-28-05; published 1-12-05 [FR 05-00537]
Bombardier; comments due by 3-3-05; published 2-1-05 [FR 05-01808]
CFM International; comments due by 2-28-05; published 12-28-04 [FR 04-28384]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 2-28-05; published 2-1-05 [FR 05-01795]
Empresa Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 2-28-05; published 12-30-04 [FR 04-28707]
Hartzell Propeller Inc.; comments due by 2-28-05; published 12-29-04 [FR 04-28492]
McDonnell Douglas; comments due by 2-28-05; published 1-12-05 [FR 05-00615]
Pratt & Whitney; comments due by 2-28-05; published 12-30-04 [FR 04-28385]
Rolls-Royce plc; comments due by 2-28-05; published 12-29-04 [FR 04-28144]
Saab; comments due by 3-3-05; published 2-1-05 [FR 05-01793]

Airworthiness standards:
Special conditions—
Boeing Model 767-300 airplane; comments due by 2-28-05; published 1-13-05 [FR 05-00660]
Class E airspace; comments due by 3-1-05; published 1-7-05 [FR 05-00373]

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Transportation—
External product piping on cargo tanks transporting flammable liquids; safety requirements; comments due by 2-28-05; published 12-30-04 [FR 04-28561]

TREASURY DEPARTMENT
Internal Revenue Service
Procedure and administration:
Corporate income tax returns and organizations filing returns under section 6033; magnetic media requirement; cross-reference; public hearing; comments due by 2-28-05; published 1-12-05 [FR 05-00648]

TREASURY DEPARTMENT
Practice and procedure:
Practice before Internal Revenue Service; hearing; comments due by 3-1-05; published 12-20-04 [FR 04-27679]

TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau
Alcohol; viticultural area designations:
Red Hill Douglas County, OR; comments due by 3-4-05; published 2-2-05 [FR 05-01874]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''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*.

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.

S. 5/P.L. 109–2

Class Action Fairness Act of 2005 (Feb. 18, 2005; 119 Stat. 4)

Last List January 12, 2005

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