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WHEN: Tuesday, April 19, 2005
9:00 a.m.–Noon—(SESSION FULL)

Tuesday, May 17, 2005
9:00 a.m.–Noon

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

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Contents

Federal Register

Vol. 70, No. 72

Friday, April 15, 2005

African Development Foundation
NOTICES
Meetings; Sunshine Act, 19919

Agriculture Department
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Forest Service
See Natural Resources Conservation Service

Alcohol and Tobacco Tax and Trade Bureau
RULES
Alcoholic beverages:
Liquor dealers; regulation recodification and administrative changes, 19880–19888
Alcohol, tobacco, and other excise taxes:
Tobacco products and cigarette papers and tubes; removal without tax payment for use in law enforcement activities, 19888–19890
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19988–19989

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications, 19877–19878
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19919–19920

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Nevada, 19925
Washington, 19925

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See Patent and Trademark Office

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 19923–19924
Correction, 19925

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19932–19933
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Statewide longitudinal data systems development, 19933–19934
Innovation and improvement—
Teaching American History Program, 19934–19942

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 19942

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 19970–19972

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Coke oven batteries, 19992–20015
PROPOSED RULES
Air pollution control:
Federal and State operating permits programs; potentially inadequate monitoring requirements and methods to improve monitoring, 19914–19915
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Ohio, 19895–19914
Pesticide registration, cancellation, etc.:
Pesticide registration; registrant request to delete certain uses, 20036–20041
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 19915–19918
NOTICES
Environmental Data Standards Council; revised data standards; availability, 19950–19951
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 19952–19953
Weekly receipts, 19951–19952
Meetings:
Association of American Pesticide Control Officials/State FIFRA Issues and Research Evaluation Group, 19953
Science Advisory Board, 19953–19954
Pesticide, food, and feed additive petitions:
Pesticides Action Network North America et al., 20042–20043
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 19954–19955
New chemicals—
Receipt and status information, 19955–19959
Water pollution control:
National Pollutant Discharge Elimination System—
Ohio; State sewage sludge management program; administration and enforcement, 19959–19961

Federal Aviation Administration
RULES
Standard instrument approach procedures, 19878–19880
PROPOSED RULES
Airworthiness directives:
General Electric Co., 19893–19894

Federal Energy Regulatory Commission
NOTICES
Meetings:
Pinnacle West Capital Corp. et al., 19950
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission, LLC, 19942–19943
CenterPoint Energy Gas Transmission Co., 19943–19944
Cincinnati Gas & Electric Co., 19944
Dominion Transmission, Inc., 19944
Eastern American Energy Corp., 19945
El Paso Natural Gas Co., 19945
Great Lakes Gas Transmission LP, 19945–19946
Gulfstream Natural Gas System, L.L.C., 19946
Horizon Pipeline Co., L.L.C., 19946
Maine Public Service Co., 19946–19947
Mississippi Canyon Gas Pipeline, LLC, 19947
Northern Border Pipeline Co., 19947
Overthrust Pipeline Co., 19948
Premcor Power Marketing LLC, 19948
Questar Pipeline Co., 19948–19949
Southern Natural Gas Co., 19949
Swecker, Gregory, et al., 19949
Tennessee Gas Pipeline Co., 19950

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 19961

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 19967

Food Safety and Inspection Service
NOTICES
Meat and poultry inspection:
Retail store operations; exemption; dollar limitations adjustment, 19920
Meetings:
Food security awareness; workshops, 19920–19921

Forest Service
NOTICES
Environmental statements; notice of intent:
Boise National Forest, ID, 19921–19922

Health and Human Services Department
See National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19961–19962
Organization, functions, and authority delegations:
Administrator Office et al.; order of succession, 19962–19963

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal property, 19965–19966

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Cut-to-length carbon steel plate from—
Romania, 19925–19926
Honey from—
Argentina, 19926–19928
Magnesium metal from—
China, 19928–19930
Russian Federation, 19930–19931

International Trade Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19968–19969
Import investigations:
Magnesium from—
China and Russia, 19969
Weather stations and components, 19969–19970

Labor Department
See Employment Standards Administration

Land Management Bureau
NOTICES
Closure of public lands:
Nevada, 19967–19968
Survey plat filings:
Colorado, 19968

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Research Advisory Committee, 19972

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19972–19973

National Institute of Standards and Technology
NOTICES
Meetings:
Gene Expression Metrology NIST/Industry Consortium; establishment feasibility, 19931

National Institutes of Health
NOTICES
Meetings:
National Institute of Child Health and Human Development, 19963–19964
National Institute on Alcohol Abuse and Alcoholism, 19963
Patent licenses; non-exclusive, exclusive, or partially exclusive:
RFE Pharma, 19964
SBL Vaccin AB, 19964–19965

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Goshute Spring Range Improvement Project; UT, 19923

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Exelon ESP Site, IL; correction, 19973
Meetings:
Nuclear Waste Advisory Committee, 19973–19974
Meetings; Sunshine Act, 19974

Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19931–19932

Pension Benefit Guaranty Corporation
RULES
Single employer plans:
Allocation of assets—
Interest assumptions for valuing and paying benefits, 19890–19892
NOTICES
Single-employer and multiemployer plans:
Interest rates and assumptions, 19974–19975

Pipeline and Hazardous Materials Safety Administration
RULES
Hazardous materials:
Transportation—
Loading, unloading, and storage, 20018–20034
NOTICES
Pipeline safety:
Controller Certification Pilot Program (CCERT), 19984–19987

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 19976
Options Price Reporting Authority:
Consolidated Options Last Sale Reports and Quotation Information; Reporting Plan; amendments, 19976–19977
Self-regulatory organizations; proposed rule changes:
International Securities Exchange, Inc.; correction, 19990
National Association of Securities Dealers, Inc., 19977–19982
National Securities Clearing Corp.; correction, 19990
Pacific Exchange, Inc., 19982–19983

Small Business Administration
NOTICES
Disaster loan areas:
Florida, 19983

State Department
NOTICES
Art objects; importation for exhibition:
Mir Iskusstva: Russia's Age of Elegance, 19983
Tutankhamun and the Golden Age of the Pharaohs, 19983–19984

Surface Transportation Board
NOTICES
Railroad services abandonment:
Indiana Rail Road Co., 19987–19988

Transportation Department
See Federal Aviation Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
RULES
Practice and procedure:
Practice before Internal Revenue Service; correction, 19892

Separate Parts In This Issue

Part II
Environmental Protection Agency, 19992–20015

Part III
Transportation Department, Pipeline and Hazardous Materials Safety Administration, 20018–20034

Part IV
Environmental Protection Agency, 20036–20043

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

9 CFR
77 19877

14 CFR
97 19878

Proposed Rules:
39 19893

27 CFR
17 19880
19 19880
24 19880
25 19880
26 19880
27 19880
31 19880
45 19888
70 19880
194 19880

29 CFR
4022 19890
4044 19890

31 CFR
10 19892

40 CFR
63 19992

Proposed Rules:
52 19895
70 19914
71 19914
81 19895
180 20036
300 19915

49 CFR
171 20018
174 20018

Rules and Regulations

Federal Register
Vol. 70, No. 72
Friday, April 15, 2005

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 05–010–1]

Tuberculosis in Cattle and Bison; State and Zone Designations; California

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by raising the designation of California from modified accredited advanced to accredited-free. We have determined that California meets the criteria for designation as an accredited-free State.

DATES: This interim rule is effective April 15, 2005. We will consider all comments that we receive on or before June 14, 2005.

ADDRESSES: You may submit comments by any 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. 05–010–1, 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. 05–010–1.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read 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. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–5467.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by *Mycobacterium bovis.* It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, lymph nodes, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, ''Tuberculosis'' (referred to below as the regulations), and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis. Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

Request for Accredited-Free Status in California

The State of California has been classified as modified accredited advanced for cattle and bison. However, we have received from the State of California a request to be recognized as an accredited-free State for cattle and bison.

With regard to cattle and bison, State animal health officials in California have demonstrated to APHIS that California meets the criteria for accredited-free status set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations. In accordance with these conditions, California has demonstrated that the State has zero percent prevalence of affected cattle or bison herds and has had no findings of tuberculosis in any cattle or bison herds in the 2 years since the depopulation of the last affected herd in the State. Additionally, the State complies with the conditions of the UMR.

Therefore, we are amending the regulations to remove California from the list of modified accredited advanced States in § 77.9(a) and adding it to the list of accredited-free States in § 77.7(a).

Immediate Action

Immediate action is warranted to accurately reflect the current tuberculosis status of California as an accredited-free State. This action will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public

comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the bovine tuberculosis regulations regarding State and zone classifications by raising the designation of California from modified accredited advanced to accredited-free. We have determined that California meets the criteria for designation as an accredited-free State.

Cattle or bison that originate in an accredited-free State or zone may be moved interstate without restriction, whereas sexually intact cattle and bison not from an accredited herd are required to have one negative test within 60 days prior to being moved interstate from a modified accredited advanced State or zone. Thus, raising California's designation to accredited-free will eliminate the costs of that testing for herd owners in the State. Tuberculosis testing, which includes veterinary fees and handling expenses, costs approximately $7.50 to $15 per test. The average per-head value of cattle in California was $1,030 in 2003, so the cost of testing represented between 0.7 and 1.5 percent of that average value. These cost savings, while beneficial, will not represent a significant monetary savings. Of course, the more a particular herd owner is involved in interstate movement, the greater the cost savings will be.

Cattle and bison are moved interstate for slaughter, for use as breeding stock, or for feeding. California has approximately 22,000 cattle and bison operations, totaling 5.2 million head. Over 90 percent of herd owners would be considered small businesses. Changing the status of California may enhance the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may also result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 77.7 [Amended]

■ 2. In § 77.7, paragraph (a) is amended by adding the word ''California,'' immediately after the word ''Arkansas,''.

■ 3. In § 77.9, paragraph (a) is revised to read as follows:

§ 77.9 Modified accredited advanced States or zones.

(a) The following are modified accredited advanced States: New Mexico and Texas.

* * * * *

Done in Washington, DC, this 12th day of April 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–7553 Filed 4–14–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30443; Amdt. No. 3120]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 15, 2005. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 15, 2005.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3.The Flight Inspection Area Office which originated the SIAP; or,

4.The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/*

federal_register/ code_of_federal_regulations/ ibr_locations.html.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on April 8, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 12 May 2005*

Phoenix, AZ, Phoenix Deer Valley, RNAV (GPS)–B, Orig
Phoenix, AZ, Phoenix Deer Valley, RNAV (GPS)–C, Orig
Phoenix, AZ, Phoenix Deer Valley, RNAV (GPS) RWY 7R, Orig
Phoenix, AZ, Phoenix Deer Valley, RNAV (GPS) RWY 25L, Orig
Phoenix, AZ, Phoenix Deer Valley, GPS–A, Orig-B, CANCELLED
Phoenix, AZ, Phoenix Deer Valley, GPS RWY 7R, Orig-B, CANCELLED
Phoenix, AZ, Phoenix Deer Valley, NDB OR GPS RWY 25L, Amdt 3A, CANCELLED
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) RWY 12R, Amdt 1
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) RWY 30L, Amdt 1
Danbury, CT, Danbury Muni, LOC RWY 8, Amdt 4
Pensacola, FL, Pensacola Regional, RNAV (GPS) RWY 17, Amdt 1
Pensacola, FL, Pensacola Regional, RNAV (GPS) RWY 35, Amdt 1
Eastman, GA, Heart of Georgia Regional, VOR/DME–A, Amdt 7
Eastman, GA, Heart of Georgia Regional, NDB RWY 2, Amdt 1
Eastman, GA, Heart of Georgia Regional, RNAV (GPS) RWY 2, Orig
Eastman, GA, Heart of Georgia Regional, VOR/DME RNAV OR GPS RWY 2, Amdt 2A, CANCELLED
Eastman, GA, Hart of Georgia Regional, RNAV (GPS) RWY 20, Orig
Newnan, GA, Newnan Coweta County, LOC RWY 32, Amdt 1
Newnan, GA, Newnan Coweta County, NDB RWY 32, Amdt 4
Newnan, GA, Newnan Coweta County, RNAV (GPS) RWY 14, Orig
Newnan, GA, Newnan Coweta County, GPS RWY 14, Orig, CANCELLED
Waycross, GA, Waycross-Ware County, NDB RWY 18, Amdt 1
Waycross, GA, Waycross-Ware County, VOR–A, Amdt 8
Waycross, GA, Waycross-Ware County, ILS OR LOC RWY 18, Amdt 1
Waycross, GA, Waycross-Ware County, GPS RWY 18, Orig, CANCELLED
Waycross, GA, Waycross-Ware County, GPS RWY 36, Orig, CANCELLED
Waycross, GA, Waycross-Ware County, RNAV (GPS) RWY 18, Orig
Waycross, GA, Waycross-Ware County, RNAV (GPS) RWY 36, Orig

Cedar Rapids, IA, The Eastern Iowa, RNAV (GPS) RWY 13, Amdt 1
Cedar Rapids, IA, The Eastern Iowa, RNAV (GPS) RWY 31, Amdt 1
Cedar Rapids, IA, The Eastern Iowa, VOR RWY 27, Amdt 12
Marion, IL, Williamson County Regional, ILS OR LOC RWY 20, Amdt 12
Auburn, IN, De Kalb County, ILS OR LOC RWY 27, Orig
Owensboro, KY, Owensboro-Daviess County, RNAV (GPS) RWY 36, Amdt 1
Alexandria, LA, Alexandria Intl, RNAV (GPS) RWY 32, Amdt 1
Annapolis, MD, Lee, RNAV (GPS) RWY 30, Orig-C
Grenada, MS, Grenada Muni, ILS OR LOC RWY 13, Amdt 1
Tunica, MS, Tunica Muni, RNAV (GPS) RWY 17, Amdt 1
Tunica, MS, Tunica Muni, RNAV (GPS) RWY 35, Amdt 1
Fayetteville, NC, Fayetteville Regional/Grannis Field, RNAV (GPS) RWY 4, Amdt 1
Fayetteville, NC, Fayetteville Regional/Grannis Field, RNAV (GPS) RWY 22, Amdt 2
Valentine, NE, Miller Field, RNAV (GPS) RWY 14, Amdt 1
Valentine, NE, Miller Field, RNAV (GPS) RWY 32, Amdt 1
Valentine, NE, Miller Field, NDB RWY 32, Amdt 8
Albuquerque, NM, Albuquerque Intl Sunport, RNAV (GPS) RWY 35, Amdt 1
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 5, Amdt 1
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 7, Amdt 2
Cleveland, OH, Cleveland-Hopkins Intl, LDA PRM RWY 6R, Orig
Cleveland, OH, Cleveland-Hopkins Intl, LDA PRM RWY 24L, Orig
Cleveland, OH, Cleveland-Hopkins Intl, LDA/DME RWY 6R, Orig
Cleveland, OH, Cleveland-Hopkins Intl, LDA/DME RWY 24L, Orig
Cleveland, OH, Cleveland-Hopkins Intl, ILS PRM RWY 6L, Orig
Cleveland, OH, Cleveland-Hopkins Intl, ILS PRM RWY 24R, Orig
Altoona, PA, Altoona-Blair County, VOR–A, Amdt 5
Altoona, PA, Altoona-Blair County, RNAV (GPS) RWY 3, Orig
Altoona, PA, Altoona-Blair County, GPS RWY 2, Orig-A, CANCELLED
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS OR LOC RWY 17L, Amdt 3, ILS RWY 17L (CAT II), Amdt 3, ILS RWY 17L (CAT III), Amdt 3
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 17L, Amdt 1
Newport News, VA, Newport News/Williamsburg Intl, RNAV (GPS) RWY 25, Amdt 1
Spokane, WA, Felts Field, NDB RWY 3L, Amdt 2
Spokane, WA, Felts Field, VOR RWY 3L, Amdt 3
Spokane, WA, Felts Field, GPS-A, Orig, CANCELLED
Spokane, WA, Felts Field, RNAV (GPS) RWY 3L, Orig
Spokane, WA, Felts Field, RNAV (GPS)–A, Orig
Land O' Lakes, WI, Kings Land O' Lakes, NDB RWY 14, Orig
Land O' Lakes, WI, Kings Land O' Lakes, NDB RWY 32, Orig
Land O' Lakes, WI, Kings Land O' Lakes, NDB OR GPS RWY 14, Amdt 9A, CANCELLED
Land O' Lakes, WI, Kings Land O' Lakes, NDB RWY 32, Orig-A, CANCELLED
Madison, WI, Dane County Regional-Truax Field, RNAV (GPS) RWY 14, Amdt 1
Madison, WI, Dane County Regional-Truax Field, RNAV (GPS) RWY 18, Amdt 1
Madison, WI, Dane County Regional-Truax Field, RNAV (GPS) RWY 21, Amdt 1
Madison, WI, Dane County Regional-Truax Field, RNAV (GPS) RWY 32, Amdt 1
Madison, WI, Dane County Regional-Truax Field, RNAV (GPS) RWY 36, Amdt 1
Madison, WI, Dane County Regional-Truax Field, ILS OR LOC/DME RWY 18, Orig
Madison, WI, Dane County Regional-Truax Field, ILS OR LOC RWY 21, Orig
Madison, WI, Dane County Regional-Truax Field, ILS OR LOC/DME RWY 36, Orig
Madison, WI, Dane County Regional-Truax Field, ILS RWY 18, Amdt 7C, CANCELLED
Madison, WI, Dane County Regional-Truax Field, ILS RWY 21, Orig-A, CANCELLED
Madison, WI, Dane County Regional-Truax Field, ILS RWY 36, Amdt 29D, CANCELLED
Madison, WI, Dane County Regional-Truax Field, RADAR–1, Amdt 17
Cheyenne, WY, Cheyenne Regional/Jerry Olson Field, RNAV (GPS) RWY 27, Orig

** * * Effective 7 Jul 2005*

Land O' Lakes, WI, Kings Land O' Lakes, RNAV (GPS) RWY 14, Orig
Land O' Lakes, WI, Kings Land O' Lakes, RNAV (GPS) RWY 32, Orig

Albemarle, NC, Stanly County, (VUJ), NDB OR GPS RWY 22L, Orig-E * * * Effective Immediately **ADD PLANVIEW NOTE:** RADAR REQUIRED. (CCP NOTAM 3/8539 ommitted submission in the Transmittal Letter)

[FR Doc. 05–7520 Filed 4–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 17, 19, 24, 25, 26, 27, 31, 70, and 194

[T.D. TTB–25]

RIN 1513–AA19

Liquor Dealers; Recodification of Regulations; Administrative Changes Due to the Homeland Security Act of 2002 (2004R–258T)

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

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is recodifying its regulations pertaining to liquor dealers. We are also making administrative changes to these regulations to reflect TTB's new name and organizational structure resulting from changes made by the Homeland Security Act of 2002. This document does not include any substantive regulatory changes.

DATES: This rule is effective on April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Karl O. Joedicke, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210; or e-mail *Karl.Joedicke@ttb.gov.*

SUPPLEMENTARY INFORMATION:

Background

As a part of its continuing efforts to reorganize chapter I of title 27 of the Code of Federal Regulations (27 CFR chapter I), the Alcohol and Tobacco Tax and Trade Bureau (TTB) is removing all of part 194, Liquor Dealers, from subchapter M, Alcohol, Tobacco, and Other Excise Taxes, and recodifying it as part 31 in subchapter A, Liquors. We are also revising the title of new part 31 to read ''Alcohol Beverage Dealers.'' These changes improve the organization of chapter I of title 27 and better describe the contents of newly designated part 31. The table below shows from which section of part 194 the requirements of part 31 are derived.

In addition, section 1111 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135) divided the former Bureau of Alcohol, Tobacco, and Firearms (ATF), Department of the Treasury, into two separate agencies, the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice, and TTB, which remains in the Department of the Treasury. This reorganization requires us to amend each of the CFR parts under our jurisdiction to reflect our Bureau's new name and organizational structure. This document makes the appropriate administrative, nonsubstantive changes to the newly designated part 31.

DERIVATION TABLE FOR PART 31

The requirements of section	Are derived from section
Subpart A	
31.1	194.1
31.2	194.2
31.3	194.3
31.4	194.4
Subpart B	
31.11	194.11
Subpart C	
31.21	194.21
31.22	194.22
31.23	194.23
31.24	194.24
31.25	194.25
31.26	194.26
31.27	194.27
31.28	194.28
31.29	194.29
31.30	194.30
31.31	194.31
31.32	194.32
31.33	194.33
31.34	194.34
31.35	194.35
Subpart D	
31.41	194.41
31.42	194.42
Subpart E	
31.51	194.51
31.52	194.52
31.53	194.53
31.54	194.54
31.55	194.55
31.56	194.56
31.57	194.57
31.58	194.58
31.59	194.59
Subpart F	
31.71	194.71
31.72	194.72
Subpart G	
31.91	194.91
31.92	194.92
31.93	194.93
31.94	194.94
Subpart H	
31.101	194.101
31.102	194.102
31.103	194.103
31.104	194.104
31.104a	194.104a
31.105	194.105
31.106	194.106
31.106a	194.106a
31.107	194.107
31.109	194.109
31.110	194.110

DERIVATION TABLE FOR PART 31—Continued

The requirements of section	Are derived from section
31.111	194.111
Subpart I	
31.121	194.121
31.121a	194.121a
31.122	194.122
31.123	194.123
31.124	194.124
31.125	194.125
31.126	194.126
31.127	194.127
31.131	194.131
31.132	194.132
31.133	194.133
31.134	194.134
31.135	194.135
31.136	194.136
31.137	194.137
31.138	194.138
31.139	194.139
Subpart J	
31.151	194.151
31.152	194.152
31.153	194.153
Subpart K	
31.161	194.161
31.162	194.162
31.163	194.163
31.164	194.164
31.165	194.165
31.166	194.166
31.167	194.167
31.168	194.168
31.169	194.169
31.170	194.170
Subpart L	
31.181	194.181
31.182	194.182
31.183	194.183
31.183a	194.183a
31.184	194.184
31.185	194.185
31.186	194.186
31.187	194.187
31.187a	194.187a
31.187b	194.187b
31.188	194.188
31.189	194.189
31.190	194.190
31.191	194.191
31.192	194.192
31.193	194.193
Subpart M	
31.201	194.201
31.202	194.202
31.203	194.203
Subpart N	
31.211	194.211

DERIVATION TABLE FOR PART 31—Continued

The requirements of section	Are derived from section
Subpart O	
31.221	194.221
31.222	194.222
31.223	194.223
31.224	194.224
31.225	194.225
31.226	194.226
31.227	194.227
31.228	194.228
31.229	194.229
31.230	194.230
31.231	194.231
31.232	194.232
31.233	194.233
31.234	194.234
31.235	194.235
31.236	194.236
31.237	194.237
31.238	194.238
31.239–31.241 [Reserved]	194.239–194.241 [Reserved]
Subpart P [Reserved]	Subpart P [Reserved]
Subpart Q	
31.261	194.261
31.262	194.262
31.263	194.263
31.264	194.264
Subpart R	
31.271	194.271
31.272	194.272
Subpart S	
31.281	194.281
31.283	194.283
Subpart T	
31.291	194.291
31.292	194.292
31.293	194.293

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule under 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the requirements of this Executive Order.

Inapplicability of Prior Notice and Comment and Delayed Effective Date Requirements

Because this final rule merely makes organizational and technical or

conforming nonsubstantive amendments to improve the layout of the regulations and to reflect the new name and organizational structure of TTB, no notice of proposed rulemaking and public comment period are required under 5 U.S.C. 553(b)(B). For the same reasons, this final rule is not subject to the delayed effective date requirement of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Karl O. Joedicke, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 17

Administrative practice and procedure, Claims, Cosmetics, Customs duties and inspection, Drugs, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Virgin Islands.

27 CFR Part 19

Caribbean Basin Initiative, Claims, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 28

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 31

Alcohol and alcoholic beverages, Claims, Excise taxes, Exports, Packaging and containers, Reporting and recordkeeping requirements.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 194

Alcohol and alcoholic beverages, Claims, Excise taxes, Exports, Packaging and containers, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, TTB amends chapter I of title 27 of the Code of Federal Regulations as follows:

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

■ 1. The authority citation for 27 CFR part 17 continues to read as follows:

Authority: 26 U.S.C. 5010, 5131, 5134, 5143, 5146, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 7011, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 17.187 [Amended]

■ 2. Amend § 17.187 by removing the reference ''part 194'' and adding, in its place, a reference to ''part 31''.

PART 19—DISTILLED SPIRITS PLANTS

■ 3. The authority citation for 27 CFR part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.3 [Amended]

■ 4. Amend § 19.3 by removing the reference to ''27 CFR part 194—Liquor Dealers'' and adding, in appropriate part number order, a reference to ''27 CFR part 31—Alcohol Beverage Dealers''.

§§ 19.49 and 19.634 [Amended]

■ 5. Amend the sections listed above as follows:

Amend	By removing the reference to	And adding in its place
§ 19.49(b)(1)	Part 194	Part 31.
§ 19.634	27 CFR 194.263	27 CFR 31.263.

PART 24—WINE

■ 6. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.4 [Amended]

■ 7. Amend § 24.4 by removing the reference to ''27 CFR Part 194—Liquor Dealers'' and adding, in appropriate part number order, a reference to ''27 CFR Part 31—Alcohol Beverage Dealers''.

§ 24.52 [Amended]

■ 8. Amend § 24.52(d) by removing the reference to ''part 194'' and adding, in its place, a reference to ''part 31''.

PART 25—BEER

■ 9. The authority citation for 27 CFR part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§§ 25.24 and 25.112 [Amended]

■ 10. Amend the sections listed above as follows:

Amend	By removing the reference to	And adding in its place
§ 25.24(a)(2)	Part 194	Part 31.
§ 25.24(a)(6)	Part 194	Part 31.
§ 25.112	Part 194	Part 31.

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 11. The authority citation for 27 CFR part 26 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§§ 26.44, 26.163, 26.210, 26.272, and 26.319 [Amended]

■ 12. Amend the sections listed above as follows:

Amend	By removing the reference to	And adding in its place
§ 26.44	Part 194	Part 31.
§ 26.163	Part 194 (“Liquor Dealers”)	Part 31.[1]
§ 26.210	Part 194	Part 31.
§ 26.272	Part 194	Part 31.
§ 26.319	§ 194.263	§ 31.263.

[1] (“Alcohol Beverage Dealers”).

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 13. The authority citation for 27 CFR part 27 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

§§ 27.30, 27.133, and 27.209 [Amended]

■ 14. Amend the sections listed above as follows:

Amend	By removing the reference to	And adding in its place
§ 27.30, first sentence	Part 194	Part 31.
§ 27.30, second sentence	Part 194	Part 31.
§ 27.133	Part 194	Part 31.
§ 27.209	§ 194.263	§ 31.263.

PART 28—EXPORTATION OF ALCOHOL

■ 15. The authority citation for 27 CFR part 28 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

§ 28.3 [Amended]

■ 16. Amend § 28.3 by removing the reference to ‘‘27 CFR Part 194—Liquor Dealers’’ and adding, in appropriate part number order, a reference to ‘‘27 CFR Part 31—Alcohol Beverage Dealers’’.

PART 70—PROCEDURE AND ADMINISTRATION

■ 17. The authority citation for 27 CFR part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§§ 70.411 and 70.414 [Amended]

■ 18. Amend the sections listed above as follows:

Amend	By removing the reference to	And adding in its place
§ 70.411(c)(16)	Part 194	Part 31.
§ 70.414(h)	Part 194	Part 31.

PART 194—LIQUOR DEALERS

■ 19. The authority citation for 27 CFR part 194 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5114, 5116, 5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

PART 194—[REDESIGNATED AS PART 31]

■ 20. Transfer 27 CFR part 194 from chapter I, subchapter M, to chapter I, subchapter A, and redesignate as 27 CFR part 31.

PART 31—LIQUOR DEALERS

■ 21. The authority citation for the newly redesignated 27 CFR part 31 reads as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5114, 5116, 5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

PART 31–ALCOHOL BEVERAGE DEALERS

■ 22. Revise the title of the newly designated part 31 to read as set forth above.

§ 31.1 [Amended]

■ 23. Amend § 31.1 by removing the words ''ATF officers'' and adding, in their place, the words ''TTB officers'.

§ 31.11 [Amended]

■ 24. Amend § 31.11 as follows:

■ a. Add, in appropriate alphabetical order, a definition of ''Administrator''.

■ b. Remove the definition of ''ATF officer'' and add, in its place, a definition of ''Appropriate TTB officer''.

■ c. Remove the definition of ''Director''.

■ d. In the definition of ''Liquor bottle'', remove the word ''Director'' and add, in its place, the word ''Administrator''.

■ e. Remove the definition of ''Regional director (compliance)''.

The additions read as follows:

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part.

§ 31.41 [Amended]

■ 25. Amend § 31.41 as follows:

■ a. In paragraph (a) remove word ''Director'' and add, in its place, the words ''appropriate TTB officer''.

■ b. Revise paragraph (b) to read as follows:

§ 31.41 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov/*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 31.4, 31.21, 31.23, 31.24, 31.25, 31.26, 31.29, 31.42, 31.51, 31.54, 31.55, 31.56, 31.71, 31.72, 31.94, 31.104, 31.104a, 31.105, 31.106, 31.107, 31.109, 31.110, 31.111, 31.121a, 31.123, 31.124, 31.125, 31.126, 31.127, 31.131, 31.132, 31.133, 31.134, 31.135, 31.136, 31.137, 31.138, 31.139, 31.151, 31.152, 31.153, 31.161, 31.169, and 31.170 [Amended]

■ 26. Amend the sections listed above as follows:

Amend	By removing the reference to	And adding in its place
§ 31.4	§ 194.1	§ 31.1.
§ 31.21	§ 194.23	§ 31.23.
§ 31.21 (two times)	§ 194.26	§ 31.26.
§ 31.23(a)	§ 194.101	§ 31.101.
§ 31.23(b)	§ 194.25	§ 31.25.
§ 31.23(b)	§ 194.27	§ 31.27.
§ 31.23(b)	§ 194.188	§ 31.188.
§ 31.23(b)	§ 194.190	§ 31.190.
§ 31.23(b)	§ 194.191(a)	§ 31.191(a).
§ 31.23(c)	§ 194.181	§ 31.181.
§ 31.23(c)	§ 194.184	§ 31.184.
§ 31.23(c)	§ 194.187	§ 31.187.
§ 31.23(c)	§ 194.187a	§ 31.187a.
§ 31.24(a)	§ 194.101	§ 31.101.
§ 31.24(b)	§ 194.26	§ 31.26.
§ 31.24(b)	§ 194.188	§ 31.188.
§ 31.24(b)	§ 194.190	§ 31.190.
§ 31.24(b)	§ 194.192	§ 31.192.
§ 31.24(c)	§ 194.181	§ 31.181.
§ 31.24(c)	§ 194.184	§ 31.184.
§ 31.25(a)	§ 194.101	§ 31.101.
§ 31.25(b)	§ 194.27	§ 31.27.
§ 31.25(b)	§ 194.188	§ 31.188.
§ 31.25(b)	§ 194.189	§ 31.189.
§ 31.25(b)	§ 194.191(a)	§ 31.191(a).
§ 31.25(c)	§ 194.181	§ 31.181.
§ 31.25(c)	§ 194.184	§ 31.184.
§ 31.25(c)	§ 194.187	§ 31.187.
§ 31.25(c)	§ 194.187a	§ 31.187a.
§ 31.26(a)	§ 194.101	§ 31.101.
§ 31.26(b)	§ 194.188	§ 31.188.
§ 31.26(b)	§ 194.189	§ 31.189.
§ 31.26(b)	§ 194.192	§ 31.192.
§ 31.26(b)	§ 194.193	§ 31.193.
§ 31.26(c)	§ 194.181	§ 31.181.
§ 31.26(c)	§ 194.184	§ 31.184.

Amend	By removing the reference to	And adding in its place
§ 31.29	§ 194.27	§ 31.27.
§ 31.42	ATF	TTB.
§ 31.51	§ 194.31	§ 31.31.
§ 31.51	§ 194.181	§ 31.181.
§ 31.51	§ 194.193	§ 31.193.
§ 31.54	§ 194.185	§ 31.185.
§ 31.54	§ 194.186	§ 31.186.
§ 31.55(c)	ATF	TTB.
§ 31.56 (two times)	§ 194.126	§ 31.126.
§ 31.56 (two times)	§ 194.185	§ 31.185.
§ 31.56 (two times)	§ 194.186	§ 31.186.
§ 31.71	§ 194.24	§ 31.24.
§ 31.71	§ 194.26	§ 31.26.
§ 31.72(b) (two times)	§ 194.103(b)	§ 31.103(b).
§ 31.94	ATF	TTB.
§ 31.94	§ 194.169	§ 31.169.
§ 31.94	§ 194.170	§ 31.170.
§ 31.104	§ 194.106	§ 31.106.
§ 31.104a	ATF	TTB.
§ 31.105	Bureau of Alcohol, Tobacco, and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 31.106(a)	ATF	TTB.
§ 31.106(b) (three times)	ATF	TTB.
§ 31.106(b)	§ 194.106a	§ 31.106a.
§ 31.106(c) (three times)	ATF	TTB.
§ 31.106(c)	§ 194.237	§ 31.237.
§ 31.107	ATF	TTB.
§ 31.109 (two times)	§ 194.104	§ 31.104.
§ 31.110(b)	regional director (compliance)	appropriate TTB officer.
§ 31.111	§ 194.104	§ 31.104.
§ 31.111	§ 194.109	§ 31.109.
§ 31.111	regional director (compliance)	appropriate TTB officer.
§ 31.121	§ 194.106(c)	§ 31.106(c).
§ 31.121a	regional director (compliance)	appropriate TTB officer.
§ 31.121a	§ 194.134	§ 31.134.
§ 31.121a	§ 194.106	§ 31.106.
§ 31.121a	ATF	TTB.
§ 31.123	Regional directors (compliance)	TTB officers.
§ 31.124	§ 194.106(b)	§ 31.106(b).
§ 31.125	§ 194.126	§ 31.126.
§ 31.126	§ 194.106(b)	§ 31.106(b).
§ 31.126	ATF	TTB.
§ 31.126	§ 194.106(c)	§ 31.106(c).
§ 31.127	regional director (compliance)	appropriate TTB officer.
§ 31.131	ATF	TTB.
§ 31.132 (two times)	regional director (compliance)	appropriate TTB officer.
§ 31.132	§ 194.131	§ 31.131.
§ 31.133	regional director (compliance)	appropriate TTB officer.
§ 31.134 (four times)	regional director (compliance)	appropriate TTB officer.
§ 31.135 (two times)	ATF	TTB.
§ 31.135	§ 194.106	§ 31.106.
§ 31.135	§ 194.106(c)	§ 31.106(c).
§ 31.135	§ 194.121a	§ 31.121a.
§ 31.136 (two times)	ATF	TTB.
§ 31.136 (two times)	§ 194.137	§ 31.137.
§ 31.136 (two times)	§ 194.139	§ 31.139.
§ 31.137, section heading	ATF	TTB.
§ 31.137	ATF	TTB.
§ 31.137	§ 194.136	§ 31.136.
§ 31.137	regional director (compliance)	appropriate TTB officer.
§ 31.138	ATF	TTB.
§ 31.139 (two times)	regional director (compliance)	appropriate TTB officer.
§ 31.139	§ 194.136	§ 31.136.
§ 31.139	ATF	TTB.
§ 31.151(a) (six times)	ATF	TTB.
§ 31.151(a)	§ 194.106(c)	§ 31.106(c).
§ 31.151(a)	regional director (compliance)	appropriate TTB officer.
§ 31.151(b)	§ 194.55(c)	§ 31.55(c).
§ 31.152	ATF	TTB.
§ 31.152 (two times)	§ 194.109	§ 31.109.
§ 31.152	§ 194.103	§ 31.103.
§ 31.152	§ 194.110	§ 31.110.
§ 31.153	§ 194.132	§ 31.132.
§ 31.153	§ 194.133	§ 31.133.
§ 31.161	§ 194.169	§ 31.169.

Amend	By removing the reference to	And adding in its place
§ 31.169 (five times)	ATF	TTB.
§ 31.169	§ 194.106(b)	§ 31.106(b).
§ 31.169	regional director (compliance) or other	appropriate.
§ 31.170	§ 194.169	§ 31.169.
§ 31.170 (two times)	§ 194.109	§ 31.109.
§ 31.170	§ 194.103	§ 31.103.
§ 31.170	§ 194.110	§ 31.110.

§ 31.182 [Amended]

■ 27. Amend § 31.182 as follows:

■ a. In paragraph (a), remove the words ''regional director (compliance)'', and add, in their place, the words ''appropriate TTB officer''.

■ b. In the second sentence of paragraph (b), remove the words ''regional director (compliance) of the region in which the plant is located'' and add, in their place, the words ''appropriate TTB officer''.

■ c. In the fourth sentence of paragraph (b), remove the words ''regional director (compliance)'' and add, in their place, the words ''appropriate TTB officer''.

§ 31.183 [Amended]

■ 28. Amend § 31.183 as follows:

■ a. In the first sentence of paragraph (a), remove the words ''regional director (compliance)'' and add, in their place, the words ''appropriate TTB officer''.

■ b. In the second sentence of paragraph (b), remove the words ''regional director (compliance) of the region in which the bonded wine cellar is located'' and add, in their place, the words ''appropriate TTB officer''.

■ c. In the fourth sentence of paragraph (b), remove the words ''regional director (compliance)'' and add, in their place, the words ''appropriate TTB officer''.

§ 31.183a [Amended]

■ 29. Amend § 31.183a as follows:

■ a. In the first sentence of paragraph (a), remove the reference to ''§ 194.103(b)'' and add, in its place, ''§ 31.103(b)''.

■ b. In the first sentence of paragraph (a), remove the words ''regional director (compliance)'' and add, in their place, the words ''appropriate TTB officer''.

■ c. In the second sentence of paragraph (b), remove the words ''regional director (compliance) of the region in which the taxpaid wine bottling house is located'' and add, in their place, the words ''appropriate TTB officer''.

■ d. In the fourth sentence of paragraph (b), remove the words ''(regional director (compliance)'' and add, in their place, the words ''appropriate TTB officer''.

§ 31.184 [Amended]

■ 30. Amend § 31.184 as follows:

■ a. In the first sentence of paragraph (a), remove the words ''regional director (compliance)'' and add, in their place, the words ''appropriate TTB officer''.

■ b. In the second sentence of paragraph (b), remove the words ''regional director (compliance) of the region in which the brewery is located'' and add, in their place, the words ''appropriate TTB officer''.

■ c. In the fourth sentence of paragraph (b), remove the words ''regional director (compliance)'' and add, in their place, the words ''appropriate TTB officer.''

§§ 31.187a, 31.187b, and 31.193 [Amended]

■ 31. Amend the sections listed above as follows:

Amend	By removing the reference to	And adding in its place
§ 31.187a	§ 194.27	§ 31.27.
§ 31.187b	§ 194.72	§ 31.72.
§ 31.193	§ 194.211	§ 31.211.
§ 31.193	§ 194.225	§ 31.225.
§ 31.193	§ 194.226	§ 31.226.
§ 31.193	§ 194.234	§ 31.234.

§ 31.201 [Amended]

■ 32. Amend § 31.201 as follows:

■ a. In the second sentence, remove the words ''regional director (compliance) serving the region in which the special tax was paid or assessed'' and add, in their place, the words ''appropriate TTB officer''.

■ b. In the third sentence, remove the words ''Bureau of Alcohol, Tobacco and Firearms'' and add, in their place, the words ''Alcohol and Tobacco Tax and Trade Bureau''.

■ c. In the fourth sentence, remove the words ''Bureau of Alcohol, Tobacco and Firearms'' and add, in their place, the words ''Alcohol and Tobacco Tax and Trade Bureau''.

§§ 31.211, 31.221, 31.222, 31.223, 31.227, and 31.228 [Amended]

■ 33. Amend the sections listed above as follows:

Amend	By removing the reference to	And adding in its place
§ 31.211	§ 194.151	§ 31.151.
§ 31.211	§ 194.169	§ 31.169.
§ 31.211	§ 194.31	§ 31.31.
§ 31.211	§ 194.188	§ 31.188.
§ 31.211	§ 194.190	§ 31.190.
§ 31.211	§ 194.192	§ 31.192.
§ 31.211	§ 194.193	§ 31.193.
§ 31.221	§ 194.223	§ 31.223.
§ 31.221	§ 194.224	§ 31.224.
§ 31.221	§ 194.225	§ 31.225.
§ 31.221	§ 194.226	§ 31.226.
§ 31.221	regional director (compliance)	appropriate TTB officer.
§ 31.221	§ 194.230	§ 31.230.

Amend	By removing the reference to	And adding in its place
§ 31.222	§ 194.237	§ 31.237.
§ 31.222	regional director (compliance)	appropriate TTB officer.
§ 31.223	ATF	TTB.
§ 31.223	regional director (compliance)	appropriate TTB officer.
§ 31.227	§ 194.225	§ 31.225.
§ 31.227	§ 194.226	§ 31.226.
§ 31.227	§ 194.235	§ 31.235.
§ 31.228	regional director (compliance)	appropriate TTB officer.
§ 31.228	§ 194.225	§ 31.225.
§ 31.228	§ 194.226	§ 31.226.

§ 31.229 [Amended]

■ 34. Amend § 31.229 as follows:

■ a. In the first sentence of paragraph (a), remove the word ''Director'' and add, in its place, the words ''appropriate TTB officer''.

■ b. In the second sentence of paragraph (a), remove the words '', in triplicate, to the regional director (compliance)'' and add, in their place, the words ''to the appropriate TTB officer''.

■ c. In the fourth sentence of paragraph (a), remove the words ''regional director (compliance)'' and add, in their place, the words ''appropriate TTB officer''.

■ d. Remove the fifth sentence of paragraph (a).

■ e. In the sixth sentence of paragraph (a), remove the word ''Director'' and add, in its place, the words ''appropriate TTB officer.''

§§ 31.230, 31.232, 31.233, 31.234, 31.235, 31.236, 31.237, 31.262, 31.264, 31.271, 31.292, and 31.293 [Amended]

■ 35. Amend the sections listed above as follows:

Amend	By removing the reference to	And adding in its place
§ 31.230(a) (three times)	regional director (compliance)	appropriate TTB officer.
§ 31.230(d)	regional director (compliance)	appropriate TTB officer.
§ 31.230(d)	ATF	TTB.
§ 31.230(d)	§ 194.225	§ 31.225.
§ 31.230(d)	§ 194.226	§ 31.226.
§ 31.232	§ 194.230	§ 31.230.
§ 31.233(a)	§ 194.225	§ 31.225.
§ 31.233(a) (two times)	§ 194.226	§ 31.226.
§ 31.233(a)	§ 194.234	§ 31.234.
§ 31.233(b)	§ 194.225	§ 31.225.
§ 31.233(b)	§ 194.226	§ 31.226.
§ 31.233(c)	§ 194.230	§ 31.230.
§ 31.234(a)	regional director (compliance)	appropriate TTB officer.
§ 31.234(a)	ATF	TTB.
§ 31.235	§ 194.225	§ 31.225.
§ 31.235	§ 194.226	§ 31.226.
§ 31.236	§ 194.230	§ 31.230.
§ 31.236	regional director (compliance)	appropriate TB officer.
§ 31.236	ATF	TTB.
§ 31.237	ATF	TTB.
§ 31.237	regional director (compliance)	appropriate TB officer.
§ 31.262 (two times)	§ 194.261	§ 31.261.
§ 31.264	§ 194.293	§ 31.293.
§ 31.271(a) (two times)	regional director (compliance)	appropriate TTB officer.
§ 31.271(b)	ATF	TTB.
§ 31.271(b)	regional director (compliance)	appropriate TTB officer.
§ 31.271(c) (two times)	regional director (compliance)	appropriate TTB officer.
§ 31.271(c)	§ 194.236	§ 31.236.
§ 31.271(c)	§ 194.237	§ 31.237.
§ 31.292	regional director (compliance)	appropriate TTB officer.
§ 31.293	§ 194.264	§ 31.264.

Signed: February 18, 2005.

John J. Manfreda,

Administrator.

Approved: March 1, 2005.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 05–7583 Filed 4–14–05; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 45

[T.D. TTB–26]

RIN 1513–AA99

Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, for United States Use in Law Enforcement Activities

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

ACTION: Temporary rule; solicitation of comments.

SUMMARY: The Department of the Treasury and the Alcohol and Tobacco Tax and Trade Bureau adopt a temporary amendment to the regulations relating to the removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States. This amendment allows manufacturers of tobacco products and cigarette papers and tubes to remove these articles without payment of tax for use by Federal agencies in their law enforcement activities, and to exempt packages of those removed products from the tax-exempt labeling requirement. We take this action to timely meet the needs of Federal agency law enforcement operations, particularly investigations involving tobacco product diversion and smuggling.

DATES: This temporary rule is effective April 15, 2005. We must receive written comments on or before June 14, 2005.

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

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, (Attn: T.D. TTB–26), P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/tobacco/rules/index.htm.* (An online comment form is posted with this temporary rule document on our Web site).
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this document and any comments we receive on this temporary rule by appointment at the TTB Library, 1310 G Street NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of this document and any comments received online at *http://www.ttb.gov/tobacco/rules/index.htm.*

FOR FURTHER INFORMATION CONTACT: Linda Wade Chapman, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 1310 G Street NW., Suite 200–E, Washington, DC 20220; telephone 202–927–8210; or e-mail *Linda.Chapman@ttb.gov.*

SUPPLEMENTARY INFORMATION:

Background

Statutory and Regulatory Provisions

Section 5704(b) of the Internal Revenue Code of 1986 (26 U.S.C. 5704(b)) provides that a manufacturer may, among other things, remove tobacco products and cigarette papers and tubes without payment of tax for use of the United States, in accordance with regulations prescribed by the Secretary of the Treasury. The regulations administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB) include, in part 45 (27 CFR part 45), provisions that implement this aspect of section 5704(b).

Section 45.31 of the TTB regulations (27 CFR 45.31) sets forth two circumstances in which manufacturers of tobacco products and cigarette papers and tubes may remove those articles for sale or donation to Federal agencies without payment of Federal excise tax. Specifically:

- In the case of articles purchased by a Federal agency with funds appropriated by the U.S. Congress, the manufacturer may remove the articles for delivery to the Federal agency for gratuitous distribution under the supervision of the agency.
- In the case of articles purchased by a donor from a manufacturer or donated directly by a manufacturer, the manufacturer may remove the articles for delivery to a Federal agency for gratuitous distribution, under the supervision of the agency, to charges of the United States or to patients in a hospital or institution operated by a State Government or the District of Columbia where the Federal agency maintains a program for distribution to members or veterans of the armed forces of the United States in the hospital or institution.

Section 45.31 further provides that tobacco products and cigarette papers and tubes removed under the provisions of part 45 may not be sold subsequent to removal.

In addition, § 45.46 of the TTB regulations (27 CFR 45.46) provides that every package of tobacco products and cigarette papers and tubes removed under part 45 must have the words ''Tax-Exempt. For Use of U.S. Not To Be Sold.'' adequately imprinted on the package or on a label securely affixed to the package.

The Need for Regulatory Change

Individuals and criminal organizations continue to engage in criminal activities involving diversion of tobacco products from the legal market and the smuggling of genuine and counterfeit tobacco products. These activities often violate the Contraband Cigarette Trafficking Act (18 U.S.C. 2341 *et seq.*), the Jenkins Act (15 U.S.C. 375 *et seq.*), or other statutory provisions, endanger the public, and jeopardize Federal, State, and local government revenues. For example, in 2002, a U.S. district court in North Carolina convicted several people of smuggling large quantities of cigarettes from that State for resale in higher-tax States in order to raise funds for a foreign terrorist organization. In addition, in January 2004, an indictment returned in El Paso, Texas, in response to a criminal investigation charged a criminal group with smuggling over 107 million counterfeit and properly trademarked cigarettes across the southern U.S. border, thereby costing the Federal government and three State governments over $8 million in lost tax revenue.

On numerous occasions, Federal law enforcement agencies—including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the Bureau of Immigration and Customs Enforcement—have used non-taxpaid tobacco products provided by a manufacturer in undercover, sting, or other law enforcement activities. Many tobacco product manufacturers are willing to provide Federal agencies with tobacco products for use in law enforcement activities, and we believe they should be able to remove those products without payment of tax under 26 U.S.C. 5704(b). However, because § 45.31 does not specifically authorize the tax-free removal of such goods for Federal law enforcement purposes, these Federal agencies must ask the manufacturer to apply to TTB for

approval of an alternate method or procedure under § 45.21 of the TTB regulations (27 CFR 45.21) to remove the tobacco products without payment of tax and without the required tax-exempt label.

Section 45.21 permits TTB to approve variances from methods or procedures specifically prescribed in part 45, provided that good cause exists for the variance and that the variance is consistent with the purpose and intended effect of the prescribed method or procedure. In addition, the variance must afford equivalent security to the revenue, not be contrary to law, not result in increased cost to the Government, or hinder administration of part 45. In the case of law enforcement activities, the variances relate to the limited uses and the post-removal sale prohibition prescribed in § 45.31 and the tax-exempt label requirement in § 45.46.

TTB has found that requests from manufacturers for tax-free removals for Federal agencies' law enforcement activities meet the criteria for a variance under § 45.21. Consequently, we routinely grant written requests for these variances on a case-by-case basis. While we attempt to issue these variances as quickly as possible, this case-by-case written approval process often is counter-productive in the context of a fast-moving criminal investigation and unnecessarily adds to the administrative workload of TTB and the cooperating tobacco manufacturers.

Accordingly, we believe that it is appropriate to amend the regulations to remove this administrative bottleneck. We also believe that, for the reasons stated below, it is in the public interest to implement these regulatory changes immediately as a temporary rule with provision for the submission of public comments, which we will consider before adoption of a final rule in this matter. This temporary rule will eliminate the need for manufacturers of tobacco products and cigarette papers and tubes to obtain a variance to remove their products without payment of tax for use in a Federal law enforcement operation. These changes will save Federal law enforcement agencies valuable time in conducting their investigations and will not jeopardize the general public or the revenue.

The supplying of tobacco products and cigarette papers and tubes by manufacturers to Federal agencies will continue to be voluntary, and these changes in the regulations do not impose additional cost, compliance, or reporting burdens on manufacturers. In addition, the temporary regulation does not preclude manufacturers from selling tobacco products, without payment of tax, for use in a Federal law enforcement operation.

Discussion of the Temporary Amendments

The amendments set forth in this document include a revision of § 45.31, which divides the section into paragraphs (a) and (b) in order to accommodate the new provision allowing removals without payment of tax for Federal law enforcement use and in order to improve the readability of the section. Paragraph (a) includes the terms of the existing first two sentences of the text as well as the new Federal law enforcement removal provision. Paragraph (b) repeats the sale prohibition terms of the last sentence of the existing text, but includes an exception for Federal law enforcement removals under paragraph (a)(3) when a sale is a necessary part of the law enforcement activity.

In addition, we amend § 45.46 by adding an exception clause at the beginning of the text for articles removed pursuant to § 45.31(a)(3). This exception is necessary because the tax-exempt label required by § 45.46 could interfere with the Federal agency's law enforcement efforts.

Public Participation

Submitting Comments

We invite comments from interested members of the public on this temporary rule. Please provide specific information in support of your comments, and submit your comments by the closing date shown above in this notice. Your comments must reference T.D. TTB–26 and must include your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

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

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

(2) Contain a legible, written signature; and

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

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

(1) Contain your e-mail address;

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

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

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

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

Confidentiality

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

Public Disclosure

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

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

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for a temporary rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This temporary rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory analysis.

Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

This temporary rule merely implements an existing agency practice by facilitating the removal, without Federal tax, of tobacco products and cigarette papers and tubes for the use of Federal agencies in law enforcement operations. The regulatory changes address immediate needs of Federal law enforcement agencies and relieve an existing administrative burden on TTB and tobacco industry members. In addition, the supplying of tobacco products and cigarette papers and tubes by manufacturers to Federal agencies continues to be voluntary, and this regulatory change would only ease an existing burden on manufacturers who wish to provide their products for this purpose. Accordingly, pursuant to 5 U.S.C. 553(b)(B), we have determined that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d) (1) and (3), we find that there is good cause for dispensing with a delayed effective date.

Drafting Information

The principle author of this document is Linda Wade Chapman, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 45

Authority delegations (Government agencies), Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

Amendments to the Regulations

■ For the reasons discussed in the preamble, we amend part 45 of the TTB regulations (27 CFR part 45) as follows:

PART 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

■ 2. Revise the section heading and text of § 45.31 to read as follows:

§ 45.31 Removals for delivery to a Federal agency.

(a) *Removal of articles.* A manufacturer may remove tobacco products or cigarette papers and tubes without payment of tax, in accordance with this part, for delivery to a Federal agency if:

(1) The removed articles were purchased by the Federal agency with funds appropriated by the Congress of the United States and are for gratuitous distribution under the supervision of the Federal agency;

(2) The removed articles were purchased by a donor from the manufacturer, or donated directly by the manufacturer, for gratuitous distribution under the supervision of the Federal agency to:

(i) Charges of the United States; or

(ii) Patients in a hospital or institution operated by the Government of a State or the District of Columbia where the Federal agency maintains a program for distribution to members or veterans of the armed forces of the United States in the hospital or institution; or

(3) The removed articles are intended for use by the Federal agency in an investigation or other Federal law enforcement activity.

(b) *Sale prohibited.* Except in the case of articles described in paragraph (a)(3) of this section where a sale is incident to the Federal law enforcement activity, tobacco products and cigarette papers and tubes removed under this section may not be sold after their removal.

■ 3. Amend § 45.46 by removing the word ''Every'' and adding, in its place, the words ''Except in the case of articles described in § 45.31(a)(3), every''.

Signed: January 31, 2005.

John J. Manfreda,

Administrator.

Approved: February 16, 2005.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 05–7582 Filed 4–14–05; 8:45 am]

BILLING CODE 4810–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in May 2005. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: *Effective Date:* May 1, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during May 2005, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during May 2005, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during May 2005.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 3.90 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent an increase (from those in

effect for April 2005) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for April 2005.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during May 2005, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 139, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
139	5–1–05	6–1–05	2.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 139, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
139	5–1–05	6–1–05	2.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*		*	*	*	
May 2005	.0390	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 11th day of April 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–7549 Filed 4–14–05; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[TD 9165]

RIN 1545–BA70

Regulations Governing Practice Before the Internal Revenue Service; Correction

AGENCY: Office of the Secretary, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to (TD 9165), which were published in the **Federal Register** on Monday, December 20, 2004 (69 FR 75839) revising the regulations governing practice before the Internal Revenue Service (Circular 230).

DATES: This correction is effective December 20, 2004.

FOR FURTHER INFORMATION CONTACT: Heather L. Dostaler at (202) 622–4940 or Brinton T. Warren at (202) 622–7800 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9165) that are the subject of these corrections are under 31 CFR sections 10.33, 10.35, 10.36, 10.37, 10.38, 10.52 and 10.93.

Need for Correction

As published, TD 9165 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 31 CFR Part 10

Practice before the Internal Revenue Service.

Correction of Publication

■ Accordingly, 31 CFR Part 10 is corrected by making the following correcting amendments:

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

■ **Paragraph 1.** The authority citation for 31 CFR, part 10 continues to read in part as follows:

Authority: Sec.3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 *et seq.*; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., p. 1017.

§ 10.35 [Corrected]

■ **Par. 2.** Section 10.35 is amended by revising paragraphs (b)(2)(ii)(B) introductory text and (b)(4)(i) to read as follows:

10.35 Requirements for covered opinions.

* * * * *

(b) * * *

(2) * * * (ii) * * *

(A) * * *

(B) Written advice, other than advice described in paragraph (b)(2)(i)(A) of this section (concerning listed transactions) or paragraph (b)(2)(i)(B) of this section (concerning the principal purpose of avoidance or evasion) that—

* * * * *

(4) *Reliance opinion*—(i) Written advice is a *reliance opinion* if the advice concludes at a confidence level of at least more likely than not (a greater than 50 percent likelihood) that one or more significant Federal tax issues would be resolved in the taxpayer's favor.

* * * * *

Dated: April 11, 2005.

Richard S. Carro,

Senior Advisor to the General Counsel (Regulatory Affairs).

[FR Doc. 05–7552 Filed 4–14–05; 8:45 am]

BILLING CODE 4830–01–P

Proposed Rules

Federal Register
Vol. 70, No. 72
Friday, April 15, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20944; Directorate Identifier 2003–NE–64–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT7–5, –7, and –9 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for General Electric Company (GE) CT7–5A2, –5A3, –7A, –7A1, –9B, –9B1, and –9B2 turboprop engines, with stage 2 turbine aft cooling plate, part number (P/N) 6064T07P01, 6064T07P02, 6064T07P05, or 6068T36P01 installed. This proposed AD would require a onetime eddy current inspection (ECI) of certain P/N stage 2 turbine aft cooling plate boltholes. This proposed AD results from reports of six stage 2 turbine aft cooling plates found cracked during inspection. We are proposing this AD to prevent stage 2 aft cooling plate separation, resulting in uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by June 14, 2005.

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

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

Contact General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave., Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805, for the service information identified in this proposed AD.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20944; Directorate Identifier 2003–NE–64–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

GE advises that they received reports of six stage 2 turbine aft cooling plates found cracked at the boltholes. The cracks ran into the lower ligament. Investigation has revealed that these cracks resulted from using worn balance arbor washers and or worn nuts. The worn arbor washers and worn nuts caused bolthole deformation and cracking. This cracking could lead to separation of the stage 2 turbine aft cooling plate from the engine. GE has analyzed the inspection data from 236 stage 2 turbine aft cooling plates to establish validated lives for lower ligament cracking and breakthrough. GE has also conducted analysis to predict lives for top ligament cracking and breakthrough, which would lead to cooling plate separation. GE's risk analysis shows that a onetime ECI at the next shop visit, but before accumulating an additional 6,000 cycles-in-service (CIS) after the effective date of the AD, of the affected P/N stage 2 turbine aft cooling plates will provide early detection of at-risk parts. GE advises that the production and overhaul tools have been removed and inspected to identify and replace arbor washers and nuts that are worn. This condition, if not corrected, could result in stage 2 aft cooling plate separation, resulting in uncontained engine failure and damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of GE Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0464, Revision 2, dated May 9, 2003, that describes procedures for performing a onetime ECI of stage 2 turbine aft cooling plates, P/Ns 6064T07P01, 6064T07P02, 6064T07P05, and

6068T36P01, at the next engine or hot section module shop visit.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require a onetime ECI of the boltholes of stage 2 turbine aft cooling plates, P/Ns 6064T07P01, 6064T07P02, 6064T07P05, and 6068T36P01. The ECI must be done at the next engine or hot section module shop visit or before accumulating an additional 6,000 CIS after the effective date of the AD, whichever occurs first. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

There are about 1,240 GE CT7–5, –7, and –9 series turboprop engines of the affected design in the worldwide fleet. We estimate that 550 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about one work hour per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. We estimate that 2.5% (or 14) of the 550 engines will require stage 2 turbine aft cooling plates being rejected by the onetime ECI. Required parts would cost about $17,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $270,700.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

General Electric Company: Docket No. FAA–2005–20944; Directorate Identifier 2003–NE–64–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by June 14, 2005.

Affected ADs

(b) None.

Applicability: (c) This AD applies to General Electric Company (GE) CT7–5A2, –5A3, –7A, –7A1, –9B, –9B1, and –9B2 turboprop engines, with stage 2 turbine aft cooling plate, part number (P/N) 6064T07P01, 6064T07P02, 6064T07P05, or 6068T36P01 installed. These engines are installed on, but not limited to, Construcciones Aeronauticas, SA CN–235 series and SAAB Aircraft AB SF340 series airplanes.

Unsafe Condition

(d) This AD results from reports of six stage 2 turbine aft cooling plates found cracked during inspection.

Compliance: (e) You are responsible for having the actions required by this AD performed at the next engine or hot section module shop visit, but before accumulating an additional 6,000 cycles-in-service after the effective date of the AD, unless already done.

OneTime Eddy Current Inspection (ECI)

(f) Perform a onetime ECI of the stage 2 turbine aft cooling plate boltholes, using paragraph 3.B. of GE Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0464, Revision 2, dated May 9, 2003.

(g) Remove from service any stage 2 turbine aft cooling plate that does not pass the return to service criteria specified in paragraph 3.B.(2) of GE Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0464, Revision 2, dated May 9, 2003.

Previous Credit

(h) Previous credit is allowed for onetime ECIs of the stage 2 turbine aft cooling plate boltholes that were done using GE ASB No. CT7–TP S/B 72–A0464, dated February 25, 2003, or GE ASB No. CT7–TP S/B 72–A0464, Revision 1, dated March 12, 2003, before the effective date of this AD.

Definition of Engine or Hot Section Module Shop Visit

(i) For the purposes of this AD, an engine or hot section module shop visit is defined as the introduction of the engine or hot section module into a shop that includes separation of CT7 turboprop engine major case flanges.

Alternative Methods of Compliance

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

Related Information

(k) None.

Issued in Burlington, Massachusetts, on April 11, 2005.

Robert E. Guyotte,

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

[FR Doc. 05–7561 Filed 4–14–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–OH–0004; FRL–7899–9]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Cincinnati to Attainment of the 1-Hour Ozone Standard; Removal of Vehicle Inspection and Maintenance Programs for the Cincinnati and Dayton Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Ohio has requested the EPA to parallel process an ozone redesignation request and a number of revisions to Ohio's air quality control plan. We are proposing to determine that the Cincinnati-Hamilton area has attained the 1-hour ozone standard for the entire period of 1996–2004 based on 1-hour ozone monitoring data demonstrating attainment of the standard during that period. As a result, certain attainment demonstration requirements, along with certain other related requirements of part D of title I of the Clean Air Act, are not applicable to the Ohio portion of the Cincinnati-Hamilton area. We are proposing to approve Ohio's request to redesignate the Ohio portion of the Cincinnati-Hamilton area to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS). We are proposing to approve Ohio's revision of the 1-hour ozone maintenance plan, previously approved by us on June 19, 2000, for the Ohio portion of the Cincinnati-Hamilton area. This update to the plan extends the timeframe for demonstrating continued maintenance of the 1-hour ozone standard through 2015, and demonstrates that the 1-hour ozone standard may be maintained in this area even with the termination of the vehicle Inspection and Maintenance (I/M) program in the Ohio portion of the Cincinnati-Hamilton area. We are notifying the public that we believe that the revised motor vehicle emissions budgets for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) for the Ohio portion of the Cincinnati-Hamilton area are adequate for conformity purposes and are approvable as part of the revised ozone maintenance plan for this area. We are proposing to approve new VOC emission control regulations for various sources in the Ohio portion of the Cincinnati-Hamilton area and to approve negative source declarations for some source categories for this area as long as the State meets certain conditions. We are proposing approval of periodic emission inventories for the Cincinnati area.

Additionally, we are proposing to find that Ohio has demonstrated that termination of the I/M program in the Ohio portion of the Cincinnati-Hamilton area will not interfere with the attainment and maintenance of the 1-hour ozone NAAQS in this area. Similarly, we are proposing to find that Ohio has demonstrated that termination of the I/M program in the Dayton area will not interfere with attainment and maintenance of the 1-hour ozone NAAQS in this area provided that the State meets certain conditions.

DATES: Written comments must be received on or before May 16, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–OH–0004, by one of the following methods:

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

Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME docket identification number. Follow the on-line instructions for submitting comments.

E-mail: *mooney.john@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: John Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand Delivery: Deliver your comments to: John Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–OH–0004. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification or replacement of comments, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters, any form of encryption, and should be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket for this proposed rule are listed in the RME index at *http://docket.epa.gov/rmepub/index.jsp.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 18th floor, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Edward Doty at (312) 886–6057 or contact him through his e-mail, *doty.edward@epa.gov,* before visiting the Region 5 office).

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *Doty.Edward@epa.gov.*

SUPPLEMENTARY INFORMATION: In the following, whenever ''we,'' ''us,'' or ''our'' are used, we mean the United States Environmental Protection Agency.

Table of Contents

I. General Information

A. Does This Proposed Action Apply to me?
B. How Can I Get Copies of This Document and Other Related Information?
C. How and to Whom Do I Submit Comments?
D. What Should I Consider as I Prepare my Comments for EPA?
II. Proposed Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS
A. What Is the Background for This Proposed Action?
B. What Are the Redesignation Review Criteria?
C. Has the State of Ohio and the Cincinnati Area Complied With the Redesignation Review Criteria?
1. Criterion (1): The Area Must Be Attaining the 1-Hour Ozone NAAQS
2. Criteria (2) and (5): The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Meet All Applicable Requirements Under Section 110 and Part D
a. Section 110 Requirements
b. Transport of Ozone Precursors to Downwind Areas
c. Part D General Requirements for Nonattainment Areas
d. Section 172(c) Requirements
e. Section 176 Conformity Requirements
f. Subpart 2 Section 182 Requirements
1. 1990 Base Year Emissions Inventory
2. Periodic Emission Inventory Updates
3. Emission Statement Requirements
4. Fifteen Percent Rate-Of-Progress Plan Requirements
5. VOC RACT Requirements
6. Reasonably Available Control Measures (RACM)
7. Stage II Vapor Recovery Requirements
8. Vehicle Inspection/Maintenance (I/M) Requirements
9. NO_X Emission Control Requirements
g. Conclusions Regarding Criteria (2) and (5)
3. Criterion (3): The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions
4. Criterion (4): The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A
III. Update of the Ohio Ozone Maintenance Plan for the Cincinnati Area
A. How did EPA Evaluate the Maintenance Plan Update?
B. How Were the Point and Area Sources Updated?
C. How Were the Mobile Sources Updated?
D. Does the Updated Maintenance Plan Reaffirm the Adequacy of the Maintenance Plan?
IV. Transportation Conformity Emission Budgets for the Cincinnati Area
A. What Are the Motor Vehicle Emissions Budgets?
B. What Is a Safety Margin?
C. How Does This Action Change the Current Maintenance Plan?
D. What Are Subarea Budgets?
E. Why Is the Request Approvable?
F. What Is the Adequacy and Approval Process for These Submitted Budgets?
V. Volatile Organic Compounds Emission Control Regulations
A. Source Categories Not Requiring New VOC Regulations
1. Industrial Cleaning Solvents
2. Shipbuilding and Ship Repair Industry
3. Automobile Refinishing
4. Aerospace Manufacturing and Rework Facilities
5. Volatile Organic Liquid Storage Tanks
6. Lithographic Printing
7. Plastic Parts Coating
B. Source Categories for Which VOC RACT Regulations Have Been Proposed
1. Bakeries
2. Batch Processes
3. Industrial Wastewater
4. SOCMI Reactors/Distillation Units
5. Wood Furniture Manufacturing
VI. Changes in the Ohio SIP To Support the Removal of Vehicle Inspection And Maintenance Programs in the Cincinnati and Dayton Areas
A. What Changes in the Ohio SIP Have Been Submitted To Support the Removal of the I/M Programs in the Cincinnati and Dayton Areas?
B. What Authorities Apply To Removing the Cincinnati and Dayton I/M Programs From Active Status and Moving Them to Contingency Measures in the Ohio SIP?
C. What Is EPA's Analysis of Ohio's Demonstrations of No Interference With the 1-Hour Ozone NAAQS in the Cincinnati and Dayton Areas?
D. Has Ohio Demonstrated That Terminating the I/M Programs in the Cincinnati and Dayton Areas Will Not Interfere With the Expeditious Attainment and Maintenance of the 8-Hour Ozone and Fine Particulate Matter NAAQS?
VII. Conclusions on the Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS And The Removal Of the Vehicle I/M Programs In The Cincinnati and Dayton Areas
A. What Are Our Conclusions Regarding Ohio's Request for the Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS?
B. What Are Our Conclusions Regarding Ohio's Ozone Maintenance Plan for the Cincinnati Area?
C. What Are Our Conclusions Regarding the VOC and NO_X Emission Inventories Used To Support Ohio's Ozone Redesignation Request?
D. What Are Our Conclusions Regarding Ohio's Draft RACT Rules?
E. What Are Our Conclusions Concerning the Elimination of I/M Programs in the Cincinnati and Dayton Areas?
VIII. Statutory and Executive Order Reviews

I. General Information

A. Does This Proposed Action Apply to Me?

This proposed action pertains to the ground level ozone programs in place in the Cincinnati (Butler, Clermont, Hamilton, and Warren Counties) and Dayton (Clark, Greene, Miami, and Montgomery Counties) areas. If you own or operate a VOC or NO_X emissions source in the Cincinnati area or live in the Cincinnati area, this proposed action may impact or apply to you. This proposed action may also apply to or impact you if you live in the Dayton area. Finally, this proposed action may impact you if you are involved in mobile source or transportation planning or implementation in the Cincinnati or Dayton areas. This action has impacts on pollution sources in these Counties, including industrial and mobile sources of air pollution.

B. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection at RME ID No. R05–OAR–2005–OH–0004, and a hard copy file which is available for inspection at the Regional Office. The official public file 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 rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

2. Electronic Access. You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov*, where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and that are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, 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

the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

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 rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket 'R05–OAR–2005–OH–0004' '' 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.

D. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit CBI to EPA through RME, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and identify electronically within the file(s) on 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 procedure set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject, heading, **Federal Register** date and page number);

b. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number;

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

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

e. If you estimate potential costs or burdens, please explain how you arrived at your estimates in sufficient detail to allow for them to be reproduced;

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

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and

h. Make sure to submit your comments by the comment period deadline identified in this proposed rule.

II. Proposed Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS

A. What Is the Background for This Proposed Action?

In accordance with section 107(d) of the Clean Air Act (CAA or Act) as amended in 1977, EPA designated all counties in the Cincinnati-Hamilton area (the Ohio portion of this area includes Butler, Clermont, Hamilton, and Warren Counties, and the Kentucky portion of this area includes Boone, Campbell, and Kenton Counties) as an ozone nonattainment area for the 1-hour ozone NAAQS in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), pursuant to section 107(d)(4)(A) of the CAA as amended in 1990, EPA designated the Cincinnati-Hamilton area as a moderate ozone nonattainment area based on monitored violations of the 1-hour ozone NAAQS during the 1987–1989 period.

From 1996 through 1998, air quality monitors located in Ohio and Kentucky recorded three years of complete, quality-assured ambient ozone monitoring data in the Cincinnati-Hamilton area that did not violate the 1-hour ozone NAAQS.[1] Thus, the area was eligible for consideration of a redesignation to attainment of the 1-hour ozone NAAQS. As noted below, this area has continued to monitor attainment of the 1-hour ozone NAAQS from the 1996–1998 period through the present.

In 1999, the Ohio Environmental Protection Agency (Ohio EPA) and the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) submitted separate requests for the redesignation of the State-specific portions of the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS. EPA received a request from Ohio EPA on July 2, 1999 to redesignate the Cincinnati area as an attainment/maintenance area for the 1-hour ozone NAAQS. Ohio EPA submitted additional supporting information on August 16, 1999, and completed its redesignation request by submitting a summary of public hearing results and comments on December 22, 1999. The Cabinet submitted a prehearing redesignation request on October 28, 1999, and requested that the EPA parallel process this submittal. The Cabinet completed its redesignation request, including an adopted ozone maintenance plan and public hearing information, in a submittal to the EPA on December 13, 1999.

On January 24, 2000 (65 FR 3630), EPA proposed approval of the Ohio and Kentucky ozone redesignation requests. This rulemaking also proposed to determine that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS by its extended attainment data, and proposed to approve an exemption for the area from NO_X emission control requirements contained in section 182(f) of the CAA. EPA issued a final rulemaking (65 FR 37879, June 19, 2000), effective July 5, 2000, determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS and approving the Ohio and Kentucky ozone redesignation requests, including the States' plans for maintaining the 1-hour ozone NAAQS in their respective portions of the Cincinnati-Hamilton area, as well as their NO_X exemption requests.

On August 17, 2000, two Ohio residents and the Ohio chapter of the Sierra Club petitioned the United States Court of Appeals for the 6th Circuit (Court) for review of EPA's final rule on the States' ozone redesignation requests for the Cincinnati-Hamilton area. The petitioners urged the Court to find that the EPA had erred in a number of respects in approving the redesignation requests. In its September 11, 2001 decision in this case, the Court upheld EPA's actions with respect to all requirements for redesignation that related to Kentucky. The Court also rejected the petitioners' challenges with respect to EPA's approval of the Ohio redesignation request, with the sole exception of EPA's finding that it could approve Ohio's redesignation request before Ohio had fully adopted all of the VOC emission control rules needed to comply with the RACT requirements of part D, subpart 2 of the CAA. Specifically, the Court rejected the petitioners' challenges to, and upheld EPA's approvals of the Ohio and Kentucky ozone maintenance plans and EPA's conclusions with respect to transportation conformity requirements.

[1] The 1-hour ozone NAAQS is violated when the annual average expected number of daily peak 1-hour ozone concentrations equaling or exceeding 0.125 parts per million (ppm) (125 parts per billion (ppb)) is 1.05 or greater over a three-year period at any monitoring site in the area of interest.

The Court concluded that EPA exceeded its discretion by determining that Ohio did not need to fully adopt all of the RACT rules required by part D, subpart 2 of the CAA. The Court vacated EPA's action in redesignating the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS and ''remanded for further proceedings consistent with this opinion.'' See *Wall* v. *EPA* (265 F.3d 436, 6th Circuit 2001).

On February 12, 2002 (67 FR 6411), in a direct final rule in response to the Court's findings, the EPA took action to reinstate EPA's redesignation to attainment for the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area. This rulemaking action was withdrawn on April 8, 2002 (67 FR 16646), as the result of the submittal of a public comment on the direct final rule. The reinstatement of the attainment designation for the Kentucky portion of the Cincinnati-Hamilton area was subsequently completed through a final rule on July 31, 2002 (67 FR 49600).

On March 12, 2002 (67 FR 11041), through a technical amendment to its June 19, 2000 final rule, the EPA revised the ozone designation of the Ohio portion of the Cincinnati-Hamilton area to nonattainment of the 1-hour ozone NAAQS with a classification of moderate nonattainment. The technical amendment of the original final rule became effective on April 11, 2002. The final rule technical amendment, coupled with EPA's July 31, 2002 final rule, created separate designations for the Ohio and Kentucky portions of the Cincinnati-Hamilton area with regard to attainment of the 1-hour ozone NAAQS. The Kentucky portion of the area is designated as attainment for the 1-hour ozone NAAQS, while the Ohio portion of the area continues to be a nonattainment area. As noted elsewhere in this notice, today's proposed action applies only to the Ohio portion of the Cincinnati-Hamilton area (only to the Cincinnati area).

On March 10, 2005, the Ohio EPA submitted a new redesignation request and ozone maintenance plan revision for the Cincinnati area. This request notes that the Cincinnati-Hamilton area has monitored attainment of the 1-hour ozone NAAQS continuously from the 1996–1999 period through the present. This submittal also includes VOC emission control rules that Ohio was preparing to adopt to comply with the RACT requirements of the Clean Air Act. This submittal notes that Ohio is scheduling a public hearing on the redesignation request, maintenance plan, and VOC RACT rules, and requests EPA to parallel process these submittal elements.

On April 4, 2005, the Ohio EPA submitted additional information including, a negative source declaration for plastic parts coating, and a demonstration that terminating the vehicle I/M programs in the Cincinnati and Dayton areas will not interfere with the attainment and maintenance of the 1-hour ozone NAAQS in these areas. Ohio EPA proposes to revise the ozone maintenance plans for these areas to move the I/M programs to the contingency measure portions of the maintenance plans. This submittal further revises the ozone maintenance demonstrations for these areas and revises mobile source emission budgets to reflect the increases in mobile source VOC and NO_X emissions that will result when the I/M programs are terminated in these areas. Ohio EPA requests the EPA to rule on the air quality impacts of removing these emission control programs, and commits to completing analyses in compliance with section 110(l) of the CAA to demonstrate that dropping these emission reduction programs will not interfere with attainment of other air quality standards and air quality control requirements covered by the CAA. Other than removing the emission impacts of the I/M programs from the maintenance plans' emission projections and moving the I/M programs to the contingency measures portions of the Cincinnati and Dayton maintenance plans, Ohio EPA requests that the remainder of the Cincinnati and Dayton maintenance plans remain the same as those previously approved by the EPA.

B. What Are the Redesignation Review Criteria?

The CAA provides the requirements for redesignating a nonattainment area to attainment of a NAAQS. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation of an area to attainment provided that: (1) The Administrator of the EPA determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable state implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, applicable Federal air pollution control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignations for the 1-hour ozone standard in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA provided further guidance on processing redesignation requests in documents including the following:

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993.

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

C. Has the State of Ohio and the Cincinnati Area Complied With the Redesignation Review Criteria?

We believe that Ohio has demonstrated that the Cincinnati-Hamilton area has attained the 1-hour ozone standard and has demonstrated that the Ohio portion of this area has met all of the applicable section 107(d)(3)(E) redesignation criteria as discussed below.

1. Criterion (1): The Area Must Be Attaining the 1-Hour Ozone NAAQS

In its June 19, 2000 rulemaking, EPA issued a final rule determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS. 65 FR 37879. While the Court, in *Wall* v. *EPA*, vacated EPA's action redesignating the area to attainment, it did not vacate EPA's determination of attainment for the entire area. Therefore, the determination remains intact and in effect. See EPA's final rule reinstating the redesignation of the Kentucky portion of the Cincinnati-Hamilton area. 67 FR 49600 (July 31, 2002). As a result of the determination of attainment, EPA also determined that certain attainment demonstration requirements, along with certain other related requirements of part D of title I of the CAA are not applicable to the area. See 65 FR 37883–3884. See Memorandum of John Seitz, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995. EPA has interpreted the provisions of subparts 1 and 2 of part D of title I of the CAA so as not to require the submission of State Implementation Plan (SIP) revisions concerning attainment demonstrations, Reasonably Available Control Measures (RACM), Reasonable Further Progress (RFP), or sections 172(c)(9) and 182(c)(9) contingency measures, and other related requirements for so long as an area is attaining the relevant NAAQS. EPA explained its rationale in its prior rulemakings on the Cincinnati area, as well as in other rulemaking actions. *See* for example 61 FR 20458 (May 7, 1996) Cleveland-Akron-Lorain), 66 FR 53094 (October 19, 2001) (Pittsburgh-Beaver Valley, Pennsylvania); 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah), 68 FR 4847,4747, 4751, 4855 (January 30, 2003), 68 FR 25418 (May 12, 2003 (St. Louis, Missouri), 60 FR 37366 (July 20, 1995), 61 FR 31832–33 (Grand Rapids, Michigan). The United States Court of Appeals for the Tenth Circuit has upheld this interpretation, *Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996), and the U.S. Court of Appeals for the Seventh Circuit has also affirmed EPA's redesignation actions based on this interpretation. *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004).

As a result of EPA's determination of attainment, certain attainment demonstration requirements, section 172(c)(1), section 182(b)(1), 182(j), the RACM requirement for reasonable further progress, and the requirement for contingency measures under sections 172(c)(9) are not applicable as long as the Cincinnati-Hamilton area continues to attain the NAAQS.

We propose to find that the Cincinnati-Hamilton area has continued to attain the 1-hour ozone standard and we propose to approve the redesignation request submitted by Ohio for the Cincinnati area as meeting this requirement. Complete, quality-assured ambient monitoring data for the 2002–2004 ozone seasons (April through October, when the highest ozone concentrations are expected to occur in this area) demonstrate that the 1-hour ozone NAAQS continues to be attained in this area. In fact, based on monitoring data, the Cincinnati-Hamilton area has been attaining the 1-hour ozone standard continuously from the 1996–1998 period though 2004.

For ozone, an area may be considered to be attaining the 1-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.9 and Appendix H, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at any monitoring site in the area or in its immediate downwind environs. A daily exceedance occurs at a monitoring site when the recorded maximum hourly ozone concentration during a given day is 0.125 parts per million of air (ppm) (125 parts per billion of air (ppb)) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors used to support a redesignation to attainment of the NAAQS should have remained at the same location for the duration of the monitoring period required to demonstrate attainment of the NAAQS (three years for ozone).

The Ohio EPA and the Cabinet have continued to submit ozone data for all monitors operated in the Cincinnati-Hamilton area. Review of the ozone data contained in AIRS shows that both States have maintained ozone monitoring in the area, with complete quality-assured monitoring data being supplied to AIRS from the 1996–1998 period, when the Cincinnati-Hamilton area first monitored attainment of the 1-hour ozone NAAQS, through the present. Our January 24, 2000 proposed rule (65 FR 3634) documented the lack of ozone standard violations for the 1996–1998 period. In Table 1, we summarize the data obtained from AIRS and demonstrate that the ozone monitoring data continue to show attainment of the 1-hour ozone NAAQS during the 2002–2004 period. As we have noted, the Cincinnati-Hamilton area did not experience a monitored violation of the 1-hour ozone NAAQS during the entire 1996–2004 period, demonstrating attainment of the 1-hour ozone NAAQS in this area.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE CINCINNATI-HAMILTON, OHIO-KENTUCKY AREA FROM 2002–2004

Site	County	Expected 1-hour ozone standard exceedances			
		2002	2003	2004	Annual average
Hamilton	Butler	1.0	0.0	0.0	0.3
Middletown	Butler	0.0	1.0	0.0	0.3
2400 Clermont	Clermont	2.0	0.0	0.0	0.7
11590 Grooms Rd.	Hamilton	1.0	0.0	0.0	0.3

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE CINCINNATI-HAMILTON, OHIO-KENTUCKY AREA FROM 2002–2004—Continued

Site	County	Expected 1-hour ozone standard exceedances			
		2002	2003	2004	Annual average
6950 Ripple Road	Hamilton	0.0	0.0	0.0	0.0
250 William Howard	Hamilton	0.0	0.0	0.0	0.0
Lebanon 230 Cook Rd	Warren	1.0	.....	.....	**
Lebanon 416 Southeast Street	Warren	.....	1.0	0.0	0.5
KY 338	Boone	0.0	0.0	0.0	0.0
700 Alexandria	Campbell	0.0	0.0	0.0	0.0
Covington	Kenton	0.0	0.0	0.0	0.0

** It is not appropriate to calculate an annual average expected exceedance rate based on a single year of ozone data.

These data have been quality-assured. These data show that the Cincinnati-Hamilton area, as a whole, is currently attaining the 1-hour ozone NAAQS.

2. Criteria (2) and (5): The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Meet All Applicable Requirements Under Section 110 and Part D

Before the Cincinnati area may be redesignated to attainment of the 1-hour ozone NAAQS, the State of Ohio must have fulfilled the applicable requirements of section 110 and part D of the Act. We address here the status of Ohio with regard to these requirements. Since the Kentucky portion of the Cincinnati-Hamilton area has been redesignated to attainment of the 1-hour ozone NAAQS, we do not here address the status of the Kentucky portion of the area. You are referred to our discussion of these criteria in our January 24, 2000 proposed rule (65 FR 3634).

The September 4, 1992 Calcagni memorandum confirms that areas requesting redesignation to attainment have to fully adopt rules and programs that come due prior to the submittal of a complete redesignation request. See also 60 FR 12459, 12465–66 (March 7, 1995). (Redesignation of Detroit-Ann Arbor, MI), 68 FR 15424, 25427 (May 12, 2003) (St. Louis NFR). *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). Furthermore, requirements of the CAA that come due subsequent to the State's submittal of a complete redesignation request would continue to be applicable to the area until a redesignation to attainment is approved, but are not required as a prerequisite for redesignation (see section 175A(c) of the CAA). If the redesignation is disapproved, the State remains obligated to fulfill those requirements.

The Court in *Wall* v. *EPA,* after reviewing EPA's prior action redesignating Cincinnati, upheld EPA's actions with respect to redesignation requirements with the exception of EPA's determination that Ohio did not need to fully adopt all of the RACT rules of part D, subpart 2, before being redesignated. In this notice, as discussed below, we propose to find that Ohio has submitted these remaining RACT rules for processing by the EPA, and that, following their adoption by the State and final approval as a SIP revision by the EPA, Ohio has complied with the RACT requirements of the CAA.

a. Section 110 Requirements

General SIP requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for the establishment and operation of appropriate apparatus, methods, systems, and procedures necessary to monitor ambient air quality; implementation of a source permit program; provision for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring, and reporting; provisions for air quality modeling; and provisions for public and local agency participation. As noted in our January 24 2000 proposed rule (65 FR 3634), the Ohio SIP was reviewed to ensure that all applicable requirements under the CAA were satisfied through SIP provisions. We have concluded that Ohio's SIP complies with the general SIP requirements under section 110 of the CAA. See also EPA's June 19, 2000 final rulemaking action.

b. Transport of Ozone Precursors to Downwind Areas

As noted in our January 24, 2000 proposed action (65 FR 3634), modeling results using EPA's Regional Oxidant Model (ROM) indicate that ozone precursor emissions from various states west of the Ozone Transport Region (OTR) in the Northeastern United States contribute to increases in ozone concentrations in the OTR. The EPA issued a SIP call under section 110(a)(2)(D) of the CAA on October 27, 1998 (63 FR 57356) (the NO_X SIP call) requiring the District of Columbia (DC) and 22 states, including Ohio, to reduce their NO_X emissions in order to reduce the transport of ozone and ozone precursors. Ohio submitted applicable statewide NO_X emission control rules as a requested SIP revision, which the EPA approved on August 5, 2003 (68 FR 12590). The redesignation of this area to attainment of the 1-hour ozone NAAQS does not remove Ohio's obligation to implement its NO_X emission control rules. However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See discussion in the prior Cincinnati redesignation notice 65 FR 37890 (June 19, 2000); Reading Pennsylvania, proposed and final rulemakings (61 FR 53174–53176,(October 10, 1996), 62 FR 24826 (May 7, 1997); Cleveland-Akron-Lorrain, Ohio 61 FR 20458 (May 7, 1996); Tampa, Florida, 60 FR 62748 (December 7, 1995). See also the

Pittsburgh redesignation 66 FR 50399 (October 19, 2001).

c. Part D General Requirements for Nonattainment Areas

Before the Cincinnati area can be redesignated to attainment, Ohio must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's ozone nonattainment classification determines the requirements to which the area and the State are subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for ozone nonattainment areas classified under table 1 of section 181(a) of the Act. As described in the General Preamble for the implementation of title I, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). The Cincinnati-Hamilton area was classified as a moderate ozone nonattainment area. Therefore, to qualify for redesignation to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D of the Act.

d. Section 172(c) Requirements

As noted in our January 24, 2000 proposed action (65 FR 3635), we determined that the original redesignation request received from the Ohio EPA for the Ohio portion of the Cincinnati-Hamilton area was supported by Ohio's compliance with the plan requirements of section 172(c). We continue to determine that Ohio has met the plan requirements of section 172(c) as discussed here.

As noted above, in the January 24, 2000 proposed action, EPA proposed to find that the requirements for SIP revisions providing ozone attainment demonstrations meeting the requirements of sections 172(c)(1), 182(b)(1), and 182(j) were not applicable for the Cincinnati-Hamilton area because the area had attained the ozone standard based on monitoring data and because the requirements for attainment demonstrations can be waived for areas attaining the ozone standard as confirmed in the May 10, 1995 Seitz memorandum. This determination was finalized in our June 19, 2000 final rulemaking (65 FR 37879). The Court, in *Wall* v. *EPA,* did not vacate this finding and it remains in effect. 64 FR 49601 (July 31, 2002).

Since the area has continued to attain the 1-hour ozone NAAQS, the requirements for ozone attainment demonstrations, reasonable further progress, RACM, and contingency measures and related requirements have continued to not be applicable to this area. For a further discussion of the basis of this determination and EPA's relevant policy, please refer to our discussions in the June 19, 2000 final rule (65 FR 37895).

The RFP requirement under section 172(c)(2) of the CAA is defined as progress that must be made toward attainment. Section 182(b)(1)(A) sets forth the specific requirements for RFP applicable to the Cincinnati-Hamilton area. On March 14, 1994, Ohio submitted a RFP plan for the Ohio portion of the Cincinnati-Hamilton area. On January 28, 1998 (63 FR 4188) EPA approved this RFP plan as meeting the 15 percent RFP VOC emission reduction requirements of section 182(b)(1)(A). By meeting the specific RFP requirements of section 182(b)(1)(A), Ohio and the Cincinnati area are also meeting the RFP requirements of section 172(c)(2).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The Ohio EPA submitted a 1990 base year emissions inventory under section 182(a)(1) and EPA approved it on December 7, 1995 (60 FR 62737). Since Ohio has met the more definitive emissions inventory requirements of section 182(a)(1), we have determined that Ohio has also met the more general emissions inventory requirements of section 172(c)(3).

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Section 182(b)(5) requires all major new sources or major source modifications in a moderate nonattainment area to achieve offsetting reductions of existing VOC emissions at a ratio of at least 1.15 to 1.0. The EPA has determined that areas redesignated to attainment do not need to comply with the requirement that a NSR program be approved prior to redesignation provided that the State demonstrates maintenance of the standard without part D NSR in effect. The rationale for this decision is described in a October 14, 1994 memorandum from Mary Nichols. See 61 FR 31831, June 21, 1996. Nonetheless, Ohio's NSR program was fully approved by the EPA on January 10, 2003 (68 FR 1366). Ohio's Federally delegated PSD program will become effective in the Cincinnati area upon redesignation to attainment.

In accordance with EPA's determination of attainment, the requirement for contingency measures under section 172(c)(9) is not applicable.

e. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. of the Federal Transit Act (''transportation conformity''), as well as to all other Federally supported or funded projects (''general conformity''). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

EPA believes that it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation requests under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall* v. *EPA,* 265 F. 3d 426, 439 (6th Cir. 2001) upholding this interpretation. See also 60 FR 62748 (December 7, 1995) (Tampa, Florida).

Ohio submitted transportation conformity regulations as a revision to the SIP on August 17, 1995. The State adopted State rules to meet the requirements of 40 CFR Part 51, subpart T, as published on November 24, 1993. EPA conditionally approved the revision to the SIP on May 16, 1996, (61 FR 24702) effective on July 15, 1996. The revision was conditionally approved because the Federal transportation conformity rule had been amended twice since the original 1993 publication and the Ohio SIP needed to

be amended to accommodate the changes. On October 6, 1999, Ohio EPA submitted a SIP revision with adopted State rules to meet the requirements of 40 CFR Part 51, subpart T as published on August 15, 1997. The revised State regulations were approved effective July 31, 2000, in a notice published on May 30, 2000, (65 FR 34395).

f. Subpart 2 Section 182 Requirements

The Cincinnati-Hamilton area was classified as a moderate nonattainment area for the 1-hour ozone NAAQS. Therefore, part D, subpart 2, section 182(b) requirements apply. As set forth in the September 4, 1992 and September 17, 1993 EPA guidance memoranda, the requirements which came due prior to Ohio's request to designate the Cincinnati area must be fully approved into the SIP before or at the time EPA approves the redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS. Those requirements are discussed below.

1. 1990 Base Year Emissions Inventory

The 1990 base year emissions inventory was due for submittal by the State by November 15, 1992. Ohio EPA submitted the Cincinnati 1990 base year VOC and NO_X emissions inventory on March 14, 1994, and EPA approved the emissions inventory on December 7, 1995 (60 FR 62737).

2. Periodic Emission Inventory Updates

Periodic VOC and NO_X emission inventories were required to be submitted every three years, beginning in November 15, 1995. Ohio provided its most recent estimates of emissions for the years 1993, 1996, 1999 and 2002 in its July 2, 1999, December 22, 1999, March 8, 2005 and April 4, 2005 redesignation request submittals. These emission inventory updates were discussed in our January 24, 2000 proposed action (65 FR 3638, Tables 2 and 3). A summary of the 1996, 1999 and 2002 emission inventories can also be found in Tables 2 and 3 of this action. EPA is proposing to approve these emission inventory updates as meeting the section 182(a)(3)(A) requirement of the CAA for periodic emission inventory submissions.

3. Emission Statement Requirements

The emission statement SIP revision was due for submittal by November 15, 1992. The Ohio EPA submitted an emission statement SIP revision for Ohio on March 18, 1994, and EPA approved it on October 13, 1994 (59 FR 51863).

4. Fifteen Percent Rate-of-Progress Plan Requirements

The 15 percent VOC emission reduction RFP plan was required to be submitted by November 15, 1993. This plan requirement was applicable to the Cincinnati-Hamilton area. The Ohio EPA submitted the 15 percent RFP plan on March 14, 1994, and EPA approved it on January 28, 1998 (63 FR 4188).

5. VOC RACT Requirements

VOC RACT rules for three classes of VOC sources are required under section 182(b)(2) to be included in the Ohio SIP. The VOC source categories are: (a) All VOC sources covered by Control Technique Guidelines (CTGs) issued between November 15, 1990 and the date the Cincinnati area attained the 1-hour ozone standard; (b) all VOC sources covered by a CTG issued prior to November 15, 1990; and (c) all other major non-CTG stationary sources in the Cincinnati area. The EPA approved Ohio's VOC RACT rules on April 25, 1996 (61 FR 18255), September 7, 1994 (59 FR 46182), and October 23, 1995 (60 FR 54308). These VOC RACT rules, however, did not complete Ohio's obligation, under the CAA, to adopt RACT rules for all applicable source categories and sources.

As noted above, in our June 19, 2000 final rule (65 FR 37879), we determined that Ohio did not need to fully adopt all of the RACT rules required by part D of the CAA for the Cincinnati area to qualify for a redesignation to attainment of the 1-hour ozone NAAQS. The Court, in *Wall* v. *EPA,* concluded that EPA exceeded its discretion in making this determination and vacated our approval of the redesignation of the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS.

Below, we address new RACT rules, permits-to-install restricting some sources to VOC emission levels below RACT applicability levels, and negative source declarations met to complete Ohio's compliance with the RACT requirements of the CAA. Assuming that these State rules and negative source declarations are approved in final, Ohio will have complied with the RACT requirements of part D of the CAA, eliminating the sole basis for the Court's decision to vacate our prior approval of the redesignation of the Cincinnati-Hamilton area.

6. Reasonably Available Control Measures (RACM)

The General Preamble, 57 FR 13560 (April 16, 1992), states that EPA interprets section 172(c)(1) so that the RACM requirements are a ''component'' of an area's attainment demonstration. Thus, since the attainment demonstration is no longer an applicable requirement, RACM is no longer an applicable requirement. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable progress or attainment. General Preamble, 57 FR 13498 (April 16, 1992). Thus, where an area has already attained the standard, no additional RACM measures are required. See prior Cincinnati redesignation, 65 FR 37883–84 (June 19, 2000); Pittsburgh-Beaver Valley, Pennsylvania, 66 FR 53096 (October 19, 2001) and St. Louis rulemaking, 68 FR 25428 (May 12, 2003).

7. Stage II Vapor Recovery Requirements

Section 182(b)(3) requires states to submit State II gasoline vapor recovery rules no later than November 15, 1992. The Ohio Stage II rules were submitted as a SIP revision on June 7, 1993 and on October 20, 1994. The EPA partially approved and partially disapproved Ohio's SIP revision for implementation of Stage II (58 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745–21–09 (DDD)(5), EPA considers Ohio's Stage II program to fully satisfy the criteria set forth in a September 17, 1993 EPA guidance document for such programs titled ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.''

Only those Stage II provisions previously approved by EPA are part of the Cincinnati maintenance plan. The September 17, 1993 guidance memorandum states that once onboard vapor recovery regulations are promulgated, the Stage II regulations are no longer applicable for moderate ozone nonattainment areas. The EPA promulgated onboard vapor recovery rules in February 1994. Therefore, pursuant to section 202(a)(6) of the CAA, Stage II is no longer required. Ohio, however, has opted to include reductions in VOC from the Stage II program as part of the submitted maintenance plan and the previously approved 15 percent RFP plan (63 FR 4188 or 63 FR 67586).

8. Vehicle Inspection/Maintenance (I/M) Requirements

Section 182(b)(4) of the CAA requires States to submit I/M regulations for ozone nonattainment areas classified as moderate and above. Under EPA's I/M rule in 40 CFR part 51, States are required to submit these regulations by November 15, 1993. Ohio submitted regulations for an I/M program (E-

Check) on May 26, 1994, and EPA approved these rules on April 4, 1995 (60 FR 16989).

As noted below, Ohio EPA has requested that the E-Check program be discontinued in the future. Ohio has demonstrated that the VOC and NO_X emission reductions obtained through the E-Check program are not needed for maintenance of the 1-hour ozone NAAQS. Ohio has requested that E-Check, upon termination, be considered to be a contingency measure in Ohio's ozone maintenance plan for the Cincinnati area. This issue is dealt with in section VI of this proposed action.

9. NO_X Emission Control Requirements

Section 182(f) of the CAA establishes NO_X emission control requirements for ozone nonattainment areas. It provides that these emission control requirements, however, do not apply to an area if the Administrator determines that NO_X emission reductions would not contribute to attainment of the ozone standard. The Administrator made such a determination for the Ohio portion of the Cincinnati-Hamilton ozone nonattainment area on July 13, 1995 (60 FR 36060). This NO_X emission control waiver was based on the fact that the Cincinnati-Hamilton area was currently not violating the 1-hour ozone NAAQS. On June 19, 2000 (65 FR 37879), we extended the NO_X emission control waiver to the entire Cincinnati-Hamilton area based on a clean air determination.

Since the NO_X emission control waiver is approved as a final rule, Ohio EPA is not required to adopt and implement NO_X emission control regulations pursuant to section 182(f) for the Cincinnati area to be redesignated. Ohio EPA has committed to adopt NO_X RACT rules as a contingency measure to be considered and possibly implemented upon a violation of the 1-hour ozone NAAQS subsequent to the redesignation of the Cincinnati area to attainment of the 1-hour ozone NAAQS.

g. Conclusions Regarding Criteria (2) and (5)

EPA concludes that, after Ohio has adopted the RACT rules reviewed here and we have approved these RACT rules as a SIP revision, Ohio and the Cincinnati area will have satisfied the requirement that the State and the area have a fully approved SIP meeting all applicable requirements under section 110(k), section 110, and part D of the CAA.

3. Criterion (3): The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, Federal measures, and other State adopted measures. The improvement in air quality in the Ohio portion of the Cincinnati-Hamilton area is due to emissions reductions from the Federal Motor Vehicle Emissions Control Program (FMVECP), Stage II gasoline vapor recovery program, VOC RACT controls, and the partial implementation of E-Check. Between 1993 and 1996, the VOC emissions in the Ohio portion of the Cincinnati-Hamilton area were reduced by 6.7 percent. The emission control programs noted here have been adopted by the State and have been approved into the Ohio SIP by the EPA. Based on this conclusion, it is concluded that Ohio has complied with Criteria (3). It is further noted that, subsequent to 1996, Ohio has continued to implement these emission controls and has adopted statewide NO_X emission control rules in compliance with EPA's NO_X SIP call, further improving the air quality in the Cincinnati-Hamilton area. See the documentation of 1990, 1993, and 1996 VOC and NO_X emissions for the Cincinnati area in Tables 2 and 3 of our January 24, 2000 proposed rule for the Cincinnati-Hamilton ozone redesignation (65 FR 3638).

4. Criterion (4): The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

EPA is proposing to approve the updated maintenance plan and to determine that it meets the requirements of the CAA.

In its January 24, 2000 proposed rule (65 FR 3630), the EPA documented and proposed to approve a maintenance plan for the Ohio portion of the Cincinnati-Hamilton area as meeting the requirements of section 175A. This maintenance plan was approved in EPA's June 19, 2000 final rule (65 FR 37879). Although the Court, in *Wall* v. *EPA*, vacated EPA's approval of the redesignation of the Cincinnati-Hamilton area due to the lack of VOC RACT rules in Ohio, the Court upheld EPA's approval of Ohio's ozone maintenance plan for the Cincinnati area.

Due to passage of time, Ohio's original maintenance demonstration, which projected maintenance of the ozone standard through 2010, no longer satisfies the requirement that the maintenance plan demonstrate maintenance for 10 years after EPA approval of the ozone redesignation request. Based on this fact, Ohio EPA has updated the maintenance plan to demonstrate maintenance through 2015. Below we review this updated maintenance plan.

Please note that besides updating the maintenance plan to demonstrate maintenance of the 1-hour ozone standard through 2015, Ohio EPA has also revised the maintenance plan to demonstrate that the 1-hour ozone standard can be maintained even if the E-Check program is terminated in the Cincinnati area. Ohio EPA has also requested that the E-Check program be moved to the contingency portion of the maintenance plan. All other aspects of the contingency portion of the plan, as approved on June 19, 2000 remain in place. See our January 24, 2000 proposed rule (65 FR 3639) for a discussion of Ohio's contingency plan.

Also please note that the ozone maintenance plan approved by EPA on June 19, 2000 included the adoption of additional RACT rules as a contingency measure. Since Ohio is in the process of adopting the additional RACT rules to meet the requirements of the CAA, the consideration of RACT adoption as a contingency measure is no longer warranted. Should a need for the implementation of contingency measures be subsequently triggered, the State would have to consider other contingency measures since this contingency measure is no longer available. Even though the State has not removed this contingency measure from the maintenance plan, we do not see this as a basis for disapproving Ohio's ozone redesignation request. The maintenance plan is not corrupted by this issue since Ohio would be forced to consider alternate contingency measures if triggered, and the presence of the RACT adoption contingency measure in the maintenance plan does not prevent Ohio from doing so.

The contingency plan provisions of the maintenance plan are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The contingency measures to be considered for implementation for the Cincinnati area are the following:

1. Lower Reid Vapor Pressure (RVP) gasoline;

2. Reformulated gasoline;

3. Broader geographic coverage of existing regulations;

4. Application of RACT on sources covered by new control technology guidelines issued in response to the 1990 CAA amendments; [2]

5. Application of RACT to smaller existing sources;

6. Implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in actual area wide VOC emissions. The transportation control measures to be considered would include: (a) Trip reduction programs, including but not limited to employer-based transportation management programs, area wide rideshare programs, work schedule changes, and telecommuting; (b) transit improvements; (c) traffic flow improvements; and (d) other measures;

7. Alternative fuel programs for fleet vehicle operations;

8. Controls on consumer products consistent with those adopted elsewhere in the United States;

9. VOC offsets for new or modified major sources;

10. VOC offsets for new or modified minor sources;

11. Increased ratio of VOC offsets required for new sources;

12. Requirements of VOC controls on new minor sources; and

13. E–Check (I/M).[3]

Consideration and selection of one or more of the contingency measures will take place in the event that the NAAQS is violated after the redesignation of the Cincinnati area to attainment of the NAAQS. If a subsequent violation of the ozone NAAQS occurs after implementation of the VOC control measures, NO_X RACT will be activated. As noted in our January 24, 2000 proposed rule (65 FR 3640), the State commits to implement contingency measures within 12 months of a violation of the NAAQS.

Based on our review of the revised maintenance plan, discussed below, and Ohio's revised contingency commitments, we conclude that Ohio has complied with Criteria (4). The revised maintenance plan meets the requirements of section 175A of the CAA and complies with the relevant guidelines of the September 4, 1992 Calcagni policy memorandum.

III. Update of the Ohio Ozone Maintenance Plan for the Cincinnati Area

A. How Did EPA Evaluate the Maintenance Plan Update?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. An EPA Office of Air Quality Planning and Standards memorandum dated September 4, 1992, provides additional guidance on the required elements of a maintenance plan. In this case, the maintenance plan is only being updated in terms of the estimated emissions projections and to add E-Check as a contingency measure for the Cincinnati area. The State already has an approved maintenance plan that includes an attainment emissions inventory, a commitment to maintain an ozone monitoring network, a contingency plan, and a commitment for continued attainment verification which was upheld by the Court. In this SIP submission, Ohio is updating the emissions projections which provide for the maintenance demonstration through at least 10 years into the future from redesignation. This is necessary because of the Court's decision which vacated EPA's original redesignation to attainment for the Cincinnati area.

The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the 1-hour ozone NAAQS, and includes emissions during the time period which had no monitored violations of the ozone NAAQS. Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment emissions inventory. The ''attainment emissions inventory'' approach to demonstrating maintenance was upheld in *Wall* v. *EPA*, 426 F. 3d at 435–37. The 1996 attainment emissions inventory established in the prior approved maintenance plan remains as the approved attainment inventory. The only change to the inventory is that on-road mobile source emissions have been updated by using MOBILE6. There have been no violations of the 1-hour ozone standard over the time period since 1996 and thus the 1996 attainment emissions levels remain valid.

Ohio has submitted updated VOC and NO_X emissions projections for the year 2015 and has submitted these projections as a revision to the SIP. The Tables below (Table 2 and Table 3) show the prior approved emissions levels for point and areas sources and the mobile source emissions that have been updated using the MOBILE6 emissions model. Also, the mobile emissions estimates are calculated without the benefit of the E-Check program for 2010 and 2015, as noted in parentheses in the on-road mobile and total emissions estimates. The results of the analysis show that the area is expected to maintain the air quality standard for at least 10 years into the future. Table 2 and Table 3 provide the VOC and NO_X emissions summaries for the Ohio portion of the Cincinnati area and demonstrate that the area's total VOC and NO_X emissions will remain below attainment levels established for 1996.

TABLE 2.—CINCINNATI, OHIO: VOC MAINTENANCE EMISSION INVENTORY SUMMARY

[Tons per day]

Source type	Year					
	1996	1999	2002	2005	2010	2015
Point	74.9	77.0	79.2	81.4	84.3	88.4
Area	70.7	71.4	72.3	73.1	74.5	79.5
On-road Mobile	82.9	70.1	60.9	45.6	33.0 *(35.1)	23.6 *(26.2)

[2] This contingency measure becomes moot when Ohio adopts the RACT rules reviewed here.

[3] It is assumed here that E-Check would not become a contingency measure until after it is terminated in the Cincinnati area.

TABLE 2.—CINCINNATI, OHIO: VOC MAINTENANCE EMISSION INVENTORY SUMMARY—Continued

[Tons per day]

Source type	Year					
	1996	1999	2002	2005	2010	2015
Total	228.5	218.5	212.4	200.1	191.8 * (193.9)	191.5 * (194.1)

* Without E-Check program.

TABLE 3.—CINCINNATI, OHIO: NO_X MAINTENANCE EMISSION INVENTORY SUMMARY

[Tons per day]

Source type	Year					
	1996	1999	2002	2005	2010	2015
Point	279.0	278.6	278.3	277.6	277.4	276.0
Area	30.9	31.4	32.1	32.2	33.8	37.4
On-road Mobile	133.9	130.4	116.3	87.8	61.8 * (65.4)	35.0 * (39.5)
Total	443.8	440.4	426.7	397.6	373.0 * (376.6)	348.4 * (352.9)

*Without E-Check program.

To demonstrate continued attainment, the State projected anthropogenic 1996 emissions of VOC and NO_X to the years 1999, 2002, 2005, 2010 and 2015. The results of this analysis show that the area is expected to maintain the air quality standard for at least ten years into the future. In fact, the emissions projections show that future emissions will be reduced from 1996 levels.

The emission projections show that the emissions are not expected to exceed the level of the base year 1996 inventory during the 10-year maintenance period. Therefore, maintenance of the 1-hour ozone NAAQS continues to be demonstrated.

The On-road Mobile emissions were also calculated without the E-Check program to determine if the area could continue to maintain the 1-hour ozone standard if the E-Check program were discontinued. The 2010 VOC emissions from on-road mobile sources were calculated by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) to be 35.1 tpd of VOC and 65.4 tpd of NO_X. In the year 2015, the on-road mobile emissions were projected to be 26.2 tpd of VOC and 39.5 tpd of NO_X without the E-Check program. These emissions demonstrate that the area can still maintain the 1-hour ozone standard without the E-Check program.

B. How Were the Point and Area Sources Updated?

The point and area sources were grown using the same expected growth rates that were used in the original approved maintenance plan. The 2010 emission estimates were grown to give the expected emissions in 2015. Area source estimates in this case include off-road mobile sources, such as construction equipment. The growth rates are based on expected population growth. Any emission reductions from implementation of RACT on the non-Control Technique Guidelines source categories, which Ohio is working to control, are not included in the point source emission projections. Thus, this is a worse case emissions projection and still demonstrates maintenance of the 1-hour ozone NAAQS. Some RACT emission controls will provide additional VOC emission reductions and will further support maintenance of the 1-hour ozone NAAQS.

C. How Were the Mobile Sources Updated?

The mobile source emissions cover all on-road mobile sources such as cars, trucks, and buses, including transit. The Ohio-Kentucky-Indiana Regional Council of Governments (OKI) used the most recent transportation network model with the most recent projections of population and employment to estimate emissions from the transportation system. The transportation network model is calibrated by using actual ground counts of vehicles currently on the highways. A summary of the OKI updates and calibrations were provided in the Ohio submittal. OKI estimated the mobile source emissions for 2015 to be 23.6 tons per day of VOC and 35 tons per day of NO_X. OKI provided the 2015 on-road mobile emissions information to the Ohio EPA, who in turn summarized the emissions in the revised maintenance demonstration and emissions budget reviewed here. OKI also provided the 2010 and 2015 emissions estimates without the E-Check program.

D. Does the Updated Maintenance Plan Reaffirm the Adequacy of the Maintenance Plan?

The updated maintenance plan submitted by Ohio has built upon the existing approved maintenance plan to extend the time-frame of the plan out to the year 2015. Ohio has used methodologies that meet the EPA guidance for emission inventory preparation. Additionally, as noted above, Ohio did not take credit for all emission reductions which may be expected in the time-frame of the maintenance plan, resulting in a conservative overestimate of future emissions and a conservative demonstration of maintenance. For example, Ohio did not take credit for the anticipated VOC controls on point sources which are not yet in place. These anticipated VOC controls will provide additional reductions on certain stationary sources in the Cincinnati area once the controls are implemented and are permanent and enforceable.

Ohio has used methods consistent with the previous approved maintenance plan. Because the revised maintenance plan projections for 2015 are below the 1996 attainment year inventory, the update to the maintenance plan for Cincinnati shows

that the maintenance plan is adequate for maintaining emissions below the 1996 attainment level.

IV. Transportation Conformity Emission Budgets for the Cincinnati Area

A. What Are the Motor Vehicle Emissions Budgets?

A motor vehicle emissions budget (MVEB) is the projected level of controlled emissions from the transportation sector (mobile sources) that is estimated in the SIP. The SIP controls emissions through regulations, for example, on fuels and exhaust levels for cars. The emissions budget concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the motor vehicle emissions budget in the SIP and how to revise the emissions budget. The transportation conformity rule allows the motor vehicle emissions budget to be changed as long as the total level of emissions from all sources remains below the attainment level. For maintenance plan submissions, the last year of the maintenance plan is the budget year for transportation conformity. The motor vehicle emissions budgets for the Ohio portion of the Cincinnati-Hamilton area, as submitted by Ohio, are for the 2015 year and are the projected emissions for the on-road mobile sources. The motor vehicle emissions budgets, if approved, will be 26.2 tons per day for VOC, and 39.5 tons per day for NO_X for the Ohio portion (Butler, Clermont, Hamilton, and Warren Counties) of the Cincinnati-Hamilton area. These emission budgets, when approved in final by EPA, will be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. For example: The Cincinnati-Hamilton area first attained the 1-hour ozone standard during the 1996–1999 time period. The State used 1996 as the year to determine attainment levels of emissions for the Cincinnati-Hamilton area. The total emissions from point, area and mobile sources in 1996 equaled 228.5 tons per day of VOC and 443.8 tons per day of NO_X. The Ohio EPA projected emissions out to the year 2015 and projected a total of 191.5 tons per day of VOC and 348.4 tons per day of NO_X from all sources in the Ohio portion of the Cincinnati-Hamilton area. The safety margin for the Ohio portion of Cincinnati-Hamilton is calculated to be the difference between these amounts, or 37.0 tons per day of VOC and 95.4 tons per day of NO_X. If the E-Check program is eliminated, the safety margin will be reduced because the total projected emissions in 2010 and 2015 will be higher.

The emissions are projected to maintain the area's air quality consistent with the 1-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels [points] that can be allocated as long as the total emission levels are maintained at or below the attainment levels. Ohio is not requesting allocation of the safety margins in the submittal. The motor vehicle emissions budgets for the Ohio portion of the Cincinnati-Hamilton area will be the 2015 emissions estimates for on-road mobile sources (motor vehicles) without the E-Check program.

C. How Does This Action Change the Current Maintenance Plan?

Full approval of Ohio EPA's submittal will change the transportation conformity emissions budgets for mobile sources. The maintenance plan is designed to provide for future growth while still maintaining the ozone air quality standard. Growth in industries, population, and traffic is offset with reductions from cleaner cars and other emission reduction programs. Through the maintenance plan, the State and local agencies can manage and maintain air quality while providing for growth.

In the submittal, Ohio has updated the emissions estimates and has requested to replace the approved 2010 motor vehicle emissions budgets with new budgets for 2015 so that the maintenance plan will extend out 10 years past the expected date of redesignation. The 2015 budgets are intended to replace the currently approved 2010 budgets rather than being in addition to the 2010 budgets, avoiding coexisting emissions budgets for two separate years.

D. What Are Subarea Budgets?

Ohio submitted these budgets as subarea budgets, which are only applicable to the Ohio portion of the Cincinnati-Hamilton area. Subarea budgets allow conformity to be determined for Ohio and Kentucky separately. Kentucky currently has approved 2010 mobile source budgets. In separate actions, both States (Ohio and Kentucky) are electing to use subarea budgets per 40 CFR 93.124(d) for the purpose of determining transportation conformity in the areas within their individual states. Subarea budgets still require the Cincinnati-Hamilton area to conduct transportation conformity for the entire area (both Ohio and Kentucky portions). However, subarea budgets allow transportation projects in each State to be implemented if and only if the budget test is met for that particular State. The new updated budgets for the Ohio side of the Cincinnati-Hamilton area for 2015 are: 26.2 tons per summer day for VOC; and 39.5 tons per summer day for NO_X.

E. Why Is the Request Approvable?

The new 2015 motor vehicle emission budgets for the Cincinnati-Hamilton area are approvable because the new motor vehicle emissions budgets for NO_X and VOC maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

F. What Is the Adequacy and Approval Process for These Submitted Budgets?

The budgets for the Ohio portion of the Cincinnati-Hamilton maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is parallel processing the maintenance plan update and the adequacy process for the budgets. In this proposed rule, EPA is proposing to find the budgets adequate and also proposing to approve the budgets as part of the maintenance plan. Because the Cincinnati-Hamilton area already has an approved maintenance plan, the budgets need to be approved and not just found adequate prior to being used for transportation conformity purposes. Therefore, the budgets cannot be used for transportation conformity until the maintenance plan update and associated budgets are approved in a final **Federal Register** notice.

If EPA receives adverse written comments with respect to the proposed approval of the Cincinnati-Hamilton emissions budgets, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the emissions budgets in our final action or proceed with the adequacy process as a separate action.

Our action on the Cincinnati-Hamilton emissions budgets will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity''

button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

V. Volatile Organic Compounds Emission Control Regulations

Ohio is required to ensure that all major VOC sources and all VOC sources that meet the applicability criteria in any of EPA's Control Technique Guideline (CTG) documents in the Cincinnati ozone nonattainment area are subject to RACT regulations. Ohio's existing VOC RACT regulations cover all CTG categories and major sources except those categories for which EPA established RACT guidance after 1990 and for one additional source category, bakeries, for which it was determined there was a major non-CTG source in the nonattainment area. An analysis of how this RACT requirement is satisfied is presented in a category-by-category basis below. VOC RACT regulations are required for any facilities that exceed the applicability criteria specified in the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor/Distillation, Wood Furniture Manufacturing, Ship Building and Ship Repair and Aerospace Manufacturing Control Technique Guideline documents. For the other post-1990 categories and for bakeries, VOC RACT regulations are required if a facility including one or more of these source categories has greater than 100 tons VOC per year of potential non-CTG VOC emissions and the facility is not subject to federally enforceable operating and/or production restrictions limiting the facility to less than 100 tons per year of non-CTG VOC emissions. A description of these source categories follows.

A. Source Categories Not Requiring New VOC Regulations

The following VOC source categories do not require any additional regulations because, for the CTG categories, there are no sources that exceed the CTG applicability criteria and for any non-CTG categories, there are either no major sources or any such sources are subject to federally enforceable operating and/or production restrictions limiting the facility to less than 100 tons per year of non-CTG VOC emissions.

1. Industrial Cleaning Solvents

On May 23, 2003, the Ohio EPA submitted to EPA a Negative Declaration Letter for Industrial Cleaning Solvents. Ohio EPA has adequately documented that there are no sources in the Ohio portion of the Cincinnati ozone nonattainment area with industrial cleaning solvent emissions that have total non-CTG potential emissions of equal to or greater than 100 tons VOC/year. Non-CTG emissions include emissions from source categories for which there is not a CTG document and unregulated emissions from source categories covered by a CTG category.

Ohio EPA made a thorough search to ensure that it considered all sources with solvent clean-up emissions. This included looking at the Standard Industrial Classification (SIC) Manual, the local Yellow Pages, a database associated with the Ohio EPA permitting system, as well as several trade associations and Web sites. Based on that review, 122 facilities were identified that are normally associated with solvent clean-up emissions. None of these facilities were found to have solvent clean-up potential emissions of over 50 TPY and there are no facilities with solvent cleaning operations that have combined non-CTG Potential to Emit (PTE) of 100 TPY or more. Therefore, Ohio EPA has adequately documented that there are no major non-CTG sources with solvent clean-up emissions and therefore there are no sources with solvent clean-up emissions that are subject to RACT.

2. Shipbuilding and Ship Repair Industry

On May 23, 2003, the Ohio EPA submitted to EPA a Negative Declaration Letter for the Ship Building and Ship Repair Industry. The Ohio EPA has determined that there are no major sources (sources with potential emissions equal to or greater than 25 tons VOC/year for this CTG category) in the Ohio portion of the Cincinnati ozone nonattainment area.

Ohio EPA made a thorough search to determine whether any ship building or ship repair facilities were located within the Cincinnati ozone nonattainment area. This included reviewing the Ohio EPA air pollution control permitting system, contacting the local office of the United States Coast Guard, reviewing ship building trade association information identified on the web and, in addition, the Harris Directory, which provides SIC information for more than 800,000 companies across the country, was investigated for those categories related to ship building and repair. None of the above sources of information resulted in the identification of any ship building and repair facilities. In addition, staff from the Hamilton County Department of Environmental Services confirmed that there are no military or commercial ship building and repair operations along the Ohio River, the only plausible location for such operations in the Ohio portion of the non-attainment areas. Therefore, Ohio EPA has adequately documented that there are no ship building and repair facilities located in the Ohio portion of the Cincinnati ozone non-attainment area.

3. Automobile Refinishing

On May 23, the Ohio EPA submitted to EPA a Negative Declaration Letter for Automobile Refinishing. Ohio EPA has adequately documented that there are no automobile refinishing (also referred to as auto body shops) major sources in the Ohio portion of the Cincinnati ozone nonattainment area with non-CTG potential emissions of equal to or greater than 100 tons VOC/year. Non-CTG emissions include emissions from source categories for which there is not a CTG document and unregulated emissions from source categories covered by a CTG category.

In order to determine whether there were any major automobile refinishing sources within the Cincinnati nonattainment area, Ohio EPA searched the SIC Code Manual for automobile refinishing in conjunction with the Harris Directory, the local and business to business Yellow Pages for automobile refinishing companies, the Ohio EPA permitting system, and Ohio EPA's Small Business Assistance Program. After reviewing all of the above sources of information 142 automobile refinishing facilities were identified. Of the 142 facilities, 103 are each subject to a Permit to Install which limits potential VOC emissions to less than 25 tons/year. A review of each of the remaining 39 facilities established that the potential VOC emissions from each of them was less than 25 tons VOC/year. Therefore, Ohio EPA has adequately documented that there are no major non-CTG automobile refinishing facilities and therefore there are no such facilities that are subject to RACT.

4. Aerospace Manufacturing and Rework Facilities

On October 14, 2003, the Ohio EPA submitted to EPA a Negative Declaration Letter for Aerospace Manufacturing and Rework Facilities. The Ohio EPA has determined that there are no major sources (sources with potential emissions equal to or greater than 25 tons VOC/year for this source category) in the Ohio portion of the Cincinnati ozone nonattainment area.

Ohio EPA made a thorough search to determine what aerospace manufacturing and/or rework facilities were located within the Cincinnati nonattainment area. Ohio EPA searched the Ohio EPA permitting system, the local and business Yellow Pages for aerospace manufacturing and rework

facilities, they utilized the web and found a number of trade associations, and used the Harris Directory, which provides SIC information for more than 800,000 companies across the country.

After reviewing all of the above sources of information, Ohio EPA identified 22 facilities in the Cincinnati nonattainment area that are generally associated with aerospace manufacturing and rework operations. These 22 facilities are listed in a table attached to the October 14, 2003, letter. In reviewing the status of those 22 facilities, it was determined that 14 facilities do not manufacture or have rework operations. Two facilities, CTL Aerospace and Gayston Corporation have federally enforceable Permits to Install which limit the allowable VOC emissions to less than 25 TPY for each facility. One facility has shut down all coating operations. The individual files were reviewed for the remaining 5 facilities and it was determined that the potential to emit of the VOC emissions for operations subject to the CTG were less than 25 TPY. Therefore, Ohio EPA has adequately documented that there are no aerospace manufacturing and rework operations located in the Ohio portion of the Cincinnati ozone non-attainment area that exceed the applicability criteria for this CTG category and therefore there are no such facilities that are subject to RACT.

5. Volatile Organic Liquid Storage Tanks

On January 27, 2004, the Ohio EPA submitted to EPA a letter documenting that there are no volatile organic liquid (VOL) storage tanks, in the Cincinnati ozone nonattainment area, at facilities with the potential to emit over 100 TPY from all non-CTG sources that do not have either enforceable operating and production restrictions limiting actual VOC emissions to below 100 TPY from these non-CTG sources or existing RACT level controls on their VOL storage tanks. Ohio EPA performed the following searches to identify all VOL storage tanks in the Cincinnati ozone nonattainment area. Ohio EPA checked the Harris Directory for those SICs which may have VOL storage tanks. They also checked the local Yellow and business Yellow Pages for petroleum, oils and solvent storage facilities, their permitting system for storage tanks and on the web, information was obtained from several trade associations.

Ohio EPA identified 151 facilities in the four county Cincinnati ozone nonattainment area with a total of 1363 storage tanks of various sizes, that contained materials having a wide range of vapor pressures. Of those 151 facilities, only 12 had PTE VOC emissions greater than 100 Tons per year from the facility. Of those 12, 7 have no storage tanks that exceed the cutoffs (storage tanks greater than 40,000 gallons storing a material with a vapor pressure greater than 0.5 pounds per square inch absolute (psia)) requiring control. One facility is subject to a federally enforceable Permit to Install limiting facility emissions to less than 100 tons per year and the storage tanks over 40,000 gallons at the other four facilities are subject to either existing petroleum liquid RACT control requirements or National Emission Standards for Hazardous Air Pollutant (NESHAP) regulations with control requirements at least as stringent as RACT. Therefore, no additional RACT control requirements are required for VOL storage tanks.

6. Lithographic Printing

On July 31, 2003, the Ohio EPA submitted to EPA a Negative Declaration Letter for Lithographic Printing. The Ohio EPA has determined that there are no major sources (sources with potential emissions equal to or greater than 100 tons per year for this source category) in the Cincinnati ozone nonattainment area.

Ohio EPA made a thorough search to determine what lithographic printing facilities were located in the Cincinnati ozone nonattainment area. Ohio EPA searched their permitting system, the local and business Yellow Pages for Lithographic printing, they utilized the web and reviewed trade association information, they used the Small Business Assistance program, and they also used the Harris Directory, which provides SIC information for more than 800,000 companies.

After reviewing the above sources of information, Ohio EPA determined that there are seven facilities which perform web offset lithographic printing. The potential to emit for three of these facilities is less than 12 tons VOC per year. The other four facilities have federally enforceable Permits to Install limiting emissions to less than 100 tons per year for each facility. Therefore, Ohio EPA has adequately documented that there are no lithographic printing facilities in the Cincinnati ozone nonattainment area that are subject to RACT regulations.

7. Plastic Parts Coating

On March 31, 2005, the Ohio EPA submitted to EPA a Negative Declaration Letter for the coating of Automotive Plastic Parts. The Ohio EPA has determined that there are no major sources (sources with potential emissions equal to or greater than 100 tons per year for this source category) in the Cincinnati ozone nonattainment area.

Ohio EPA made a thorough search to determine what automotive plastic parts coating facilities were located in the Cincinnati ozone nonattainment area. Ohio EPA searched their permitting system, the local and business Yellow Pages for automotive plastic parts coating, they utilized the web and reviewed trade association information, they used the small business assistance program, and they also used the Harris Directory which provides SIC information on more than 800,000 companies.

After reviewing the above sources of information, Ohio EPA determined that there are three facilities which coat automotive plastic parts. The potential to emit for one of these facilities is less than 10 tons VOC per year and the other two automotive plastic parts coating facilities have federally enforceable Permits to Install limiting emissions to less than 100 tons per year for each facility. Therefore, Ohio EPA has adequately documented that there are no automotive plastic parts coating facilities in the Cincinnati ozone nonattainment area that are subject to RACT regulations.

B. Source Categories for Which VOC RACT Regulations Have Been Proposed

On March 8, 2005, Ohio EPA proposed for parallel processing VOC regulations for five source categories that are discussed below. Parallel processing includes proposed rulemaking (by EPA) on draft rules submitted by the State with EPA's final rulemaking taking place subsequent to the State rules being finally adopted. Subsequent to proposal, Ohio EPA agreed to make some revisions to these proposed rules so that they are consistent with EPA VOC RACT requirements and therefore approvable. If Ohio's final rules are not consistent with what has been agreed on to ensure that these rules represent RACT, or if Ohio makes other substantive changes to these rules, EPA will not be able to go final without additional rulemaking. A discussion of these required changes is included in the section for each rule.

1. Bakeries

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–12 ''Control of Volatile Organic Compound Emissions from Commercial Bakery Oven Facilities'' and the accompanying definitions in 37–45–21–01(U). This draft rule applies to any commercial bakery oven facility in the Cincinnati ozone nonattainment area with a

potential to emit VOC emissions equal to or greater than 100 tons per year. Each bakery oven subject to these control requirements must install and operate a VOC emission control system with an overall control efficiency of at least 95 percent by weight. A bakery oven is exempted from this control requirement if it has annual VOC emissions of less than 25.0 tons and average daily VOC emissions of less than 192 pounds. This is consistent with the exemption levels that were approved by EPA in the Maricopa County (Arizona) bakery rule. This rule contains a calculation procedure to determine uncontrolled potential to emit, a requirement to achieve compliance within 12 months as well as compliance testing requirements, monitoring and inspection requirements as well as recordkeeping and reporting requirements. Ohio EPA agreed to delete the last sentence in the draft definition of ''Commercial bakery oven facility'' which improperly exempts establishments that produce bakery products primarily for direct sale on the premises to household consumers and that utilize only batch bakery ovens. This rule, with the revised definition, is consistent with RACT and is therefore approvable.

2. Batch Processes

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–14 ''Control of Volatile Organic Compound Emissions from Process Vents in Batch Operations'' and the accompanying definitions in 3745–21–01(W). This draft rule applies to any batch process train for a variety of chemical manufacturing operations at facilities in the Cincinnati ozone nonattainment area with over 100 tons per year of potential VOC emissions. A batch operation is a non-continuous operation in which chemicals are added to the process in discrete intervals as opposed to on a continuous basis. A batch process train is a collection of equipment (*e.g.*, reactors, filters, distillation columns, extractors, crystallizers, blend tanks, neutralizer tanks, digesters, surge tanks and product separators) configured to produce a specific product or intermediate by a batch operation.

Exempted from the VOC control requirements of this rule are any unit operation with uncontrolled annual VOC emissions of less than 500 pounds per year and any batch process train containing process vents that have, in the aggregate, uncontrolled total annual mass emissions of less than 30,000 pounds per year.

For those process vents of batch process trains and unit operations within batch process trains subject to the control requirements of this rule, compliance can be achieved by (1) reducing uncontrolled VOC emissions by an overall efficiency of at least 90 percent, or to 20 parts per million volume, per batch cycle; (2) using a boiler or process heater to comply with the above by requiring that the vent stream be introduced into the flame zone of the boiler or process heater, (3) using a flare provided that it meets Ohio's approved flare requirements in 3745–21–09(DD)(10)(d). In addition, suitable recordkeeping, reporting and test methods have been included.

Compliance with these control requirements is required within 12 months of the effective date of this rule. In order to eliminate ambiguity in 3714–21–14(A)(4), which deals with compliance deadlines, Ohio EPA agreed to eliminate the last sentence in 3714–21–14(A)(4) and to add ''1990'' after baseline year in order to specify the year after which actual emissions could not have exceeded 100 tons per year of VOC to make the source eligible for avoiding applicability to the batch rule by restricting emissions to less than 100 tons VOC per year by federally enforceable operating restrictions.

This proposed batch rule is consistent with EPA VOC RACT guidance and is approvable provided that the changes to 3714–21–14(A)(4) are made.

3. Industrial Wastewater

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–16 ''Control of Volatile Organic Compound Emissions from Industrial Wastewater'' and the accompanying definitions in 3745–21–01(Y). This draft rule applies to facilities in the Cincinnati ozone nonattainment area with the potential to emit over 100 tons VOC per year that have operations in one of several industrial categories (such as organic chemicals, pesticides and pharmaceutical manufacturing) and that generate process wastewater.

The proposed industrial wastewater rule contains the following control requirements: Each individual drain system shall be covered and, if vented, be routed through a closed vent system to a control device, or each drain shall be equipped with water seal controls or a tightly fitting cap or plug, each surface impoundment that receives, manages or treats an affected VOC wastewater stream must be equipped with a cover and a closed-vent system which routes the VOC vapors to a control device or the surface impoundment must be equipped with a floating flexible membrane cover, each oil-water separator shall be equipped with a fixed roof and a closed vent system that routes the vapors to a control device or a floating roof, each portable container must be covered, each wastewater tank shall have a fixed roof, a fixed roof and a closed-vent system that routes the VOC vapors to a control device, a fixed roof and an internal floating roof, or an external floating roof, and each treatment process must meet the applicable requirements described above along with other requirements such as venting the gases from the treatment process to a control device designed and operated to reduce wastewater VOC emissions by 90%. There is also an alternative control option requiring EPA approval.

There are also inspection and monitoring requirements, a list of approved test methods, recordkeeping requirements and a requirement that compliance be achieved within 12 months from the effective date of the rule.

Ohio EPA agreed to make the following changes to its draft rule: revise the definition of ''Affected VOC'' in 3745–21–01(Y)(3) to ''means VOC with a Henry's Law Constant greater than * * *,'' delete the last sentence in 3745–21–16(A)(4), add ''1990'' before ''baseline year'' (for the reason described in the prior section) and delete the phrase ''or (D)(8)'' from 3745–21–16(D)(1) as (D)(8) is a control option for treatment processes and was not intended to be an alternative to the control requirements in (D)(3) through (D)(7). This rule was largely based on the Texas wastewater rule that was approved by EPA. We believe that the rule, with the modifications identified is approvable as RACT.

4. SOCMI Reactors/Distillation Units

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–13 ''Control of Volatile Organic Compound Emissions from Reactors and Distillation Units Employed in SOCMI Chemical Production'' and the accompanying definitions in 3745–21–01(V). This rule applies to any reactor or distillation unit within a process unit that produces a SOCMI chemical and that is located in the Cincinnati ozone nonattainment area. Any reactor or distillation unit in a process unit with a design capacity of less than 1,100 tons per year of chemicals produced is exempt from the control requirements of this rule. This rule also exempts any reactor or distillation unit that is regulated by either of two of Ohio's existing VOC RACT rules or three new source performance standards, each of

which have federally enforceable control requirements that are at least as stringent as the control requirements for this SOCMI rule. Each process vent is classified according to characteristics of the process vent stream (VOC concentration, flow rate, and the total resource effectiveness (TRE)) prior to a control device. The TRE is a cost-effectiveness tool established by EPA to determine if the annual cost of controlling a gas stream is reasonable based on the emission reduction that can be achieved by a combustion-type control device.

One of the following controls is required for those process vents for which control is required, based upon the above: Discharge to a properly operating flare, discharge to the flame zone of a boiler or process heater with a heat input capacity of over 150 million BTU per hour, discharge to a boiler or process heater as the primary fuel or with the primary fuel, discharge to a control device that reduces VOC emissions by at least 98% or emits VOC at a concentration less than 20 ppmv, achieve and maintain a TRE index value greater than 1.0 (for which no additional control is warranted), or discharge to an existing combustion device with a 90% reduction efficiency.

Compliance is required within 12 months of the effective date of the rule. This rule also includes compliance testing, TRE determination testing and monitoring requirements, as well as recordkeeping and reporting requirements.

Ohio EPA agreed to revise 3714–21–13(A)(2) and add a new (A)(3) that specifies that for those sources that are exempt from the requirements of the SOCMI rule because they are subject to another rule, they must be subject to the limits of that rule. Ohio EPA also agreed to delete (F)(1)(f) which allows emission reduction credit for a recovery device that is part of the process.

This proposed VOC rule is consistent with EPA RACT guidance and is approvable provided that the indicated changes are made.

5. Wood Furniture Manufacturing

On March 8, 2005, Ohio EPA submitted draft rule 3745–21–15 ''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations'' and the accompanying definitions in 3745–21–01(X). This draft rule applies to any facility that has wood furniture manufacturing operations with a potential to emit 25 tons VOC per year and is located in the Cincinnati ozone nonattainment area.

The five compliance options for wood finishing operations are: (1) A VOC content limit of 0.8 pound VOC per pound of solids for topcoats only, (2) VOC content limits for topcoats and sealers, wherein topcoats are subject to 1.8 pounds VOC per gallon of solids or 2.0 pounds VOC per gallon of solids for an acid-cured alkyd amino conversion topcoat, and sealers are subject to 1.9 pounds VOC per gallon of solids or 2.3 pounds VOC per gallon of solids for an acid-cured alkyd amino sealer, (3) a VOC emission control system for topcoats and/or sealers that is equivalent to the VOC content limits of the above options, (4) daily VOC emissions limits for topcoats, and (5) daily VOC emissions limit for topcoats, sealers, and other finishing materials. The compliance options associated with daily VOC emissions are based on a daily summation of actual VOC emissions not exceeding 90% of the daily summation of VOC emissions allowed under compliance options (1) or (2). This rule also allows 30-day averaging for dip coaters.

This rule also requires a work practice implementation plan that develops environmentally desirable work practices including: An operator training course, a leak inspection and maintenance plan, a cleaning and washoff accounting system, spray booth cleaning restrictions, storage requirements for coatings, coating application requirements, line cleaning and spray gun cleaning procedures and emission control practices from washoff operations.

Compliance is required 12 months after the effective date of this rule, which also includes compliance testing and monitoring requirements for a VOC emission control system, as well as recordkeeping and reporting requirements. This rule is consistent with VOC RACT guidance and approvable provided that Ohio EPA revises its viscosity provisions, as agreed, so that viscosity cannot, by itself, be used to establish the VOC content for dip coaters.

VI. Changes in the Ohio SIP To Support the Removal of Vehicle Inspection and Maintenance Programs in the Cincinnati and Dayton Areas

A. What Changes to the Ohio SIP Have Been Submitted To Support the Removal of the I/M Programs in the Cincinnati and Dayton Areas?

Ohio EPA submitted a revision to the Cincinnati and Dayton-Springfield portions of the Ohio SIP on April 4, 2005. This revision requests that the I/M programs in Ohio, also known as the E-Check programs, be discontinued in the Cincinnati and Dayton-Springfield areas by December 31, 2005. The revision also requests that the E-Check program regulations be moved from the active control measures portion of the SIP to the contingency measures portion of the Cincinnati and Dayton-Springfield 1-Hour Ozone Maintenance Plans.

The Cincinnati and Dayton-Springfield areas are required to implement ''basic'' I/M programs under section 182(b)(4) of the Act because they were originally designated as moderate 1-hour nonattainment areas. In order to maximize NO_X, VOC and CO emissions reductions from the I/M program, Ohio EPA chose to implement an ''enhanced'' program in those areas and has incorporated an on-board diagnostic (OBD) component into the programs. EPA fully approved Ohio's I/M programs on April 4, 1995 (60 FR 16989). The E-Check programs began operation on January 2, 1996, to help meet nonattainment area requirements for the ozone NAAQS effective at the time. As noted in other portions of this action, both the Cincinnati and Dayton-Springfield areas have either been redesignated to attainment for the 1-hour ozone standard, or are in the process of doing so. Both areas have developed maintenance plans showing how they plan on maintaining the 1-hour ozone standard. In its submittal, Ohio EPA is modifying these maintenance plans showing that the 1-hour standard can be maintained through 2015 in the Cincinnati area without use of emission reductions associated with the E-Check program beyond December 31, 2005 and through 2005 for Dayton-Springfield.

B. What Authorities Apply To Removing the Cincinnati and Dayton I/M Programs From Active Status and Moving Them to Contingency Measures in the Ohio SIP?

Section 110(l) of the Act states that ''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.'' The states' obligation to demonstrate attainment of each of the NAAQS is considered as ''any applicable requirement(s) concerning attainment.'' A demonstration is necessary to show that this revision will not interfere with attainment or maintenance of the NAAQS, including the relatively new 8-hour ozone and PM2.5 standards, or any other requirement of the Act.

With respect to the 1-hour ozone NAAQS, the Dayton-Springfield area has met the standard and was redesignated to attainment on May 5, 1995 (60 FR 22289). EPA is proposing approval of the Cincinnati-Hamilton redesignation request in today's action. As noted elsewhere, EPA has approved 1-hour ozone maintenance plans for both areas. These approved maintenance plans show that control measures in place in these areas are sufficient for overall emissions to remain beneath the attainment level of emissions until the end of the maintenance period, in these cases 2005 for Dayton-Springfield and 2010 for Cincinnati-Hamilton. In accordance with the Act and EPA redesignation guidance, however, states are free to adjust control strategies in the maintenance plan as long as they can demonstrate that overall emissions remain below the attainment level of emissions. By making such a demonstration, control programs may be discontinued and removed from the SIP. At a minimum, however, section 175A(d) of the Act requires that contingency measures in the maintenance plan include all measures in the SIP for the area before that area was redesignated to attainment. Since the E-Check program was in the SIP prior to redesignation to attainment for ozone, the E-Check program must be listed in the contingency portion of the 1-hour ozone maintenance plan as required by section 175A(d). As part of this action, Ohio EPA is making a demonstration showing continued maintenance of the 1-hour ozone standard without taking credit for reductions from the Dayton-Springfield and Cincinnati E-Check programs.

Provisions in EPA's I/M rule, set forth in 40 CFR section 51.372(c) provide additional requirements that apply to the Cincinnati-Hamilton and Dayton-Springfield E-Check program situation. These provisions were published January 5, 1995, at 60 FR 1735. The provisions indicate that certain areas seeking redesignation may submit only the authority for an I/M program rather than an implemented program in satisfaction of the applicable I/M requirements. Under these I/M rule provisions, a basic I/M area which has been redesignated to attainment for the 1-hour ozone NAAQS can convert the I/M program to a contingency measure as part of the area's 1-hour ozone maintenance plan, notwithstanding the new antibacksliding provisions in EPA's recent 8-hour ozone implementation rule. Ohio has retained the necessary legal authority to meet this requirement, and has requested that E-Check be converted to a contingency measure in both areas. A basic I/M area which is designated nonattainment for the 8-hour ozone NAAQS, and which is not required to have an I/M program based on its 8-hour ozone designation, continues to have the option to move its I/M program to a contingency measure as long as the 8-hour nonattainment area can demonstrate that doing so will not interfere with its ability to comply with any NAAQS or any other applicable CAA requirement pursuant to section 110(l) of the Act. For further details on the application of 8-hour ozone anti-backsliding provisions to basic I/M programs in 1-hour ozone maintenance areas, please refer to the May 12, 2004, EPA Memorandum from Tom Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, and Leila H. Cook, Group Leader, State Measures and Conformity Group, Office of Transportation and Air Quality, to the Air Program Managers, the subject of which is ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs.'' A copy of this memorandum may be obtained at *http://www.epa.gov/ttn/oarpg/t1pgm.html* or on RME, EPA's electronic public docket and comment system at *http://docket.epa.gov/rmepub/.*

C. What Is EPA's Analysis of Ohio's Demonstrations of No Interference With the 1-Hour Ozone NAAQS in the Cincinnati and Dayton Areas?

The April 4, 2005 Ohio SIP revision seeking removal of the E-Check program includes an evaluation for the 1-hour ozone NAAQS of the potential emission impacts that would result from removal of the Cincinnati and Dayton-Springfield E-Check program as an active control measure in the SIP. For the 1-hour ozone NAAQS, the submittal provides VOC and NO_X emission inventory data for the Ohio portion of the Cincinnati-Hamilton CMSA nonattainment area for 1996, the attainment year for the area, and projected emission inventories for 2005, 2010, and 2015. The projected mobile source emission inventories for 2010, and 2015 do not include emission reduction credits from the operation of the E-Check Program after 2005. As shown in Tables 4 and 5 below, projected, total VOC and NO_X emissions for 2005, 2010, and 2015 for the Ohio portion of the Cincinnati 1-Hour Ozone Maintenance Area all fall below the emissions levels in 1996, when the area met the 1-hour standard. These VOC and NO_X emission totals include emissions from the point, area, mobile, and non-road source categories. The estimates are also quite conservative as they do not include emissions reductions from certain control programs, namely the RACT rules for VOC and NO_X reductions achieved from implementing regulations to meet EPA's NO_X SIP call. Thus, the area demonstrates continued maintenance of the 1-hour ozone NAAQS without the E-Check Program in the Cincinnati-Hamilton area.

TABLE 4.—TOTAL VOC EMISSIONS FOR THE CINCINNATI-HAMILTON 1-HOUR OZONE MAINTENANCE AREA

VOC (in tpsd)	Year				
	1990	1996	2005	2010	2015
Total VOC for Maintenance Area	265.7	228.5	200.1	191.8	191.5
VOC Increase w/o E-Check Program	.....	.....	.....	2.1	2.6
Total VOC for Maintenance w/o E-Check	265.7	228.5	200.1	193.9	194.1

TABLE 5.—TOTAL NO_X EMISSIONS FOR THE CINCINNATI-HAMILTON 1-HOUR OZONE MAINTENANCE AREA

NO_X (in tpsd)	Year				
	1990	1996	2005	2010	2015
Total NO_X for Maintenance Area	440.5	443.8	397.6	373.0	348.4

TABLE 5.—TOTAL NO_X EMISSIONS FOR THE CINCINNATI-HAMILTON 1-HOUR OZONE MAINTENANCE AREA—Continued

NO_X (in tpsd)	Year				
	1990	1996	2005	2010	2015
NO_X Increase w/o E-Check Program	.....	.....	.....	3.6	4.5
Total NO_X for Maintenance w/o E-Check	440.5	443.8	397.6	376.6	352.9

Also for the 1-hour ozone NAAQS, the submittal provides VOC and NO_X emission inventory data for the Dayton-Springfield CMSA (*i.e.*, Clark, Greene, and Montgomery Counties) for 1990, the attainment year for the area, and revised projected emission inventories for 1996, 2000, and 2005. The revised projected mobile source emission inventories for 2005 do not include emission reduction credits from the operation of the E-Check Program after 2004. As shown in Tables 6 and 7 below, projected, total VOC and NO_X emissions for 2005 for the Dayton-Springfield 1-Hour Ozone Maintenance Area all fall below the emissions levels in 1990, the attainment year for the area. These VOC and NO_X emission totals include emissions from the point, area, mobile, and non-road source categories. The estimates are also quite conservative as they do not include emissions reductions from certain control programs, namely the RACT rules for VOC and NO_X reductions achieved from implementing regulations to meet EPA's NO_X SIP call.

There are 2 issues with the 1-hour ozone demonstration for the Dayton area that must be addressed in order for us to approve the maintenance plan changes for Dayton. In the April 4, 2005 submittal, the Ohio EPA provides emissions estimates for the Dayton area for 1996, 2000, and 2005. In order to show that the area can maintain the ozone standard for an additional ten years, the Ohio EPA must estimate area wide emissions for Dayton for the year 2015. Additionally, the state must recalculate the attainment year mobile source emissions, in Dayton's case for the year 1990, using EPA's Mobile 6 model. This will provide the necessary information needed to show whether the area can stay within the attainment level of emissions in the future without implementing the E-Check program.

If Ohio EPA provides this information, we are proposing to find that Ohio has demonstrated that termination of the I/M program in the Dayton area will not interfere with attainment and maintenance of the 1-hour ozone NAAQS in this area provided that Ohio extends such demonstration through 2015 or later and corrects the demonstration to use MOBILE 6 estimates for mobile source emission factors for the attainment year (1990) and provides a revised demonstration to the EPA prior to our final rulemaking.

TABLE 6.—TOTAL VOC EMISSIONS FOR THE DAYTON-SPRINGFIELD 1-HOUR OZONE MAINTENANCE AREA

VOC (in tpsd)	Year			
	1990	1996	2000	2005
Total VOC for Maintenance Area	301.1	270.6	282.9	290.9
VOC Increase w/o E-Check Program	.....	.....	.....	1.2
Total VOC for Maintenance w/o E-Check	301.1	270.6	282.9	292.1

TABLE 7.—TOTAL NO_X EMISSIONS FOR THE DAYTON-SPRINGFIELD 1-HOUR OZONE MAINTENANCE AREA

NO_X (in tpsd)	Year			
	1990	1996	2000	2005
Total NO_X for Maintenance Area	129.6	115.6	117.1	111.1
NO_X Increase w/o E-Check Program	.....	.....	.....	0.95
Total NO_X for Maintenance w/o E-Check	129.6	115.6	117.1	112.05

D. Has Ohio Demonstrated That Terminating the I/M Programs in the Cincinnati and Dayton Areas Will Not Interfere With the Expeditious Attainment and Maintenance of the 8-Hour Ozone and Fine Particulate Matter NAAQS?

In addition to demonstrating that movement of the E-Check program to a contingency measure would not interfere with the 1-hour ozone NAAQS, Ohio also needs to demonstrate that removing the E-Check Program as an active control measure from the SIP in the Cincinnati-Hamilton and Dayton-Springfield areas would not interfere with the new 8-hour ozone and fine particulate matter standards. In a future action, Ohio will be submitting supplemental information providing a demonstration that removal of the E-Check Program will not interfere with attainment of the 8-hour ozone and PM2.5 NAAQS. At this time, EPA is proposing to approve the State's demonstration that E-Check is not needed for purposes of the 1-hour ozone standard, but the State must submit, and EPA must approve, a demonstration on 8-hour ozone and PM2.5 prior to program discontinuation.

VII. Conclusions on the Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS and the Removal of the Vehicle I/M Programs in the Cincinnati and Dayton Areas

A. What Are Our Conclusions Regarding Ohio's Request for the Redesignation of the Cincinnati Area to Attainment of the 1-Hour Ozone NAAQS?

Based on the discussions of compliance with the redesignation criteria above, rulemakings concerning the redesignation of the Cincinnati area and on the fact that Ohio is in the process of completing the adoption of VOC RACT regulations meeting the RACT requirements of the CAA, we conclude that Ohio and the Cincinnati area will comply with the criteria for redesignation to attainment of the 1-hour ozone NAAQS. Therefore, we are proposing to approve this redesignation if Ohio meets the conditions noted in this proposed action. The process of redesignation for the 1-hour ozone standard must be completed prior to the revocation of the 1-hour ozone standard on June 15, 2005.

We also conclude that the current ozone air quality in the Cincinnati-Hamilton area supports continuation of the determination of attainment for the Cincinnati area and our conclusion that certain planning requirements of the CAA are not applicable to this area.

B. What Are Our Conclusions Regarding Ohio's Ozone Maintenance Plan for the Cincinnati Area?

Based on our review of the maintenance plan proposed by the State, including a demonstration of maintenance through 2015 and a revised contingency plan that includes an I/M program as a contingency measure following the termination of the program in the Cincinnati area, we conclude that Ohio has proposed a maintenance plan that meets the requirements of section 175A of the CAA. Assuming that Ohio adopts this maintenance plan as proposed, we propose to approve this maintenance plan as a SIP revision. If the State substantially revises the maintenance plan from the version proposed by the State and reviewed here, this will result in the need for additional proposed rulemaking on maintenance plan.

C. What Are Our Conclusions Regarding the VOC and NO_X Emission Inventories Used To Support Ohio's Ozone Redesignation Request?

Based on emission estimates submitted to support Ohio's ozone redesignation requests for the Cincinnati area, we conclude that Ohio has met the requirements of section 182(a)(3)(A) of the CAA for periodic emissions inventory updates. We are proposing to approve the 1996, 1999, and 2002 emission estimates summarized in this proposed rule for the Cincinnati area as the updated periodic emission inventory estimates.

D. What Are Our Conclusions Regarding Ohio's Draft RACT Rules?

For five source categories, we conclude that RACT regulations proposed by the State are approvable provided that the State makes the rule changes noted above in the final adopted versions of the rules. The five source categories covered by these draft rules are: Bakeries; chemical manufacturing batch processes; industrial wastewater treatment; SOCMI reactors and distillation units; and wood furniture manufacturing. Significant changes in the RACT rules from the versions reviewed here, other than the changes negotiated between the State and the EPA and described in this notice, will result in the need for additional proposed rulemaking on these RACT regulations.

We conclude that the following VOC source categories do not require any additional regulations: Industrial solvent cleaning; shipbuilding and ship repair industry; automobile refinishing; aerospace manufacturing and rework facilities; volatile organic liquid storage tanks; lithographic printing; and plastic parts coating. For these source categories, either there are no sources with VOC emissions exceeding the cutoffs for major sources under EPA and CAA RACT policy, or the existing sources have Federally enforceable operating and/or production restrictions limiting the facility emissions to levels below major source size cutoffs.

Assuming the State adopts RACT rules that we can approve in final, we conclude that the State will comply in full with the RACT requirements of the CAA.

E. What Are Our Conclusions Concerning the Elimination of I/M Programs in the Cincinnati and Dayton Areas?

We are proposing that the State has demonstrated that eliminating the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the 1-hour ozone NAAQS. We are proposing such conclusion provided that Ohio submits additional documentation to the EPA prior to our final rulemaking on this issue that extends the Dayton-Springfield emission estimates through 2015 or later and corrects the demonstration to use MOBILE 6 estimates for mobile source emissions for the attainment year (1990). This demonstration does not complete the State's demonstration obligations under section 110(l) of the CAA. The State must also demonstrate that the elimination of these emission reduction programs will not interfere with the attainment and maintenance of the 8-hour ozone NAAQS and the fine particulate NAAQS and with the attainment and maintenance of other air quality standards and criteria of the CAA. Ohio EPA has committed to complete this demonstration before I/M program discontinuation in the Cincinnati and Dayton-Springfield areas.

VIII. Statutory and Executive Order Reviews

Executive Order 12866 Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211 Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 7, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–7509 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[OAR–2003–0180; FRL–7900–7]

RIN 2060–AM63

Request for Comment on Potentially Inadequate Monitoring in Clean Air Act Applicable Requirements and on Methods To Improve Such Monitoring; Notice of Public Comment Period Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed rulemaking (ANPR); notice of public comment period extension.

SUMMARY: The EPA is announcing that the closing date of the public comment period for the advanced notice of proposed rulemaking (ANPR) ''Request for Comment on Potentially Inadequate Monitoring in Clean Air Act Applicable Requirements and on Methods To Improve Such Monitoring'' (70 FR 7905, February 16, 2005) is extended sixty days from April 18, 2005 until June 17, 2005. After publishing this ANPR, the EPA received a letter dated March 11, 2005, from Environmental Integrity Project and several other environmental and citizens' organizations requesting a 120-day extension of the public comment period to allow the public to provide more meaningful comments, given the broad scope of the ANPR. The EPA believes it is reasonable to extend the public comment period for sixty days and is hereby granting the requested extension for that period.

DATES: Comments must be submitted by June 17, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0180, 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: Send electronic mail (e-mail) to EPA Docket Center at *a-and-r-docket@epamail.epa.gov*.
- Fax: Send faxes to EPA Docket Center at (202) 566–1741.
- Air and Radiation Docket, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket, U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, 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.

Instructions: Direct your comments to Docket ID No. OAR–2003–0180. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information

about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

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 Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Barrett Parker, Emissions, Monitoring, and Analysis Division, Office and Air Quality Planning and Standards, Mail Code C339–02, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5635; fax number: (919) 541–1039; and e-mail address: *parker.barrett@epa.gov.*

Dated: April 7, 2005.

Jeffrey F. Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 05–7577 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7899–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Naval Magazine Indian Island, Port Hadlock from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Naval Magazine Indian Island Site (Site) located in Port Hadlock, Washington from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington have determined that the remedial action for the Site has been successfully executed by the Navy and no further response under CERCLA is needed.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before May 16, 2005.

ADDRESSES: Comments may be mailed to: Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL–110, Seattle, Washington 98101. Comprehensive information on this Site is available in the Administrative Record which is available for reviewing at Engineering Field Activity, Northwest, 19917 Seventh Avenue NE., Poulsbo, Washington 98370, (360) 396–0018. Information on the Site and a copy of the deletion docket are available for viewing at the Information Repositories which are located at: Jefferson County Library, 620 Cedar Avenue, Port Hadlock, Washington 98339, (360) 385–6544, and at: U.S. Environmental Protection Agency, Region 10, Superfund Records Center, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–4494.

FOR FURTHER INFORMATION CONTACT: Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL–110, Seattle, Washington 98101, phone: (206) 553–1066, fax: (206) 553–0124, e-mail: *gaines.beverly@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency Region 10 announces its intent to delete the Naval Magazine Indian Island, which is located near Port Hadlock, Washington, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites.

The Naval Magazine Indian Island NPL Site covers approximately 2,700 acres. The remedial action focused primarily on a 3.7 acre landfill that operated from the 1940's until the mid 1970's and received a variety of solid and hazardous wastes. The Record of Decision for Indian Island signed in August 1995 by the Navy, EPA, and the State of Washington Department of Ecology (Ecology), specified remedial actions for the Northend Landfill and addressed several other areas of contamination. The Navy has conducted cleanup activities at the Site under the oversight of EPA and Ecology pursuant to an Interagency Agreement between the Navy, EPA, and Ecology. EPA and Ecology have determined that remedial action for the Site has been successfully completed by the Navy. The Site is an active Naval base used primarily for handling and storage of Naval ordnance. After deletion from the NPL, Ecology will continue its oversight activities at the Site.

EPA will accept comments on the proposal to delete the Site for thirty (30) days after publication of this document in the **Federal Register**. Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Indian Island Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL, where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate, or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants

or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure, a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, the Navy may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, a site may be restored to the NPL without application of the Hazard Ranking System. In the case of this Site, the selected remedy is protective of human health and the environment. However, because the remedy leaves waste on Site (only at the Northend Landfill) above levels that allow for unlimited use and unrestricted exposure, a review of the selected remedy will be conducted at least every five years from initiation of the remedial action. EPA's decision on this deletion will not change the listing of Naval Magazine Indian Island on the Washington State Hazardous Sites List.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: The Navy, the responsible party for the Site, has implemented all appropriate response actions required, the State of Washington has concurred with the proposed deletion decision, and a notice will be published in the local newspapers and distributed to appropriate federal, state, and local officials and other interested parities announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and all relevant documents have been compiled in the site deletion docket and made available in the local site information repositories.

Deletion of the site from the NPL does not in itself, create, alter or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this action, § 300.425(e)(3) of the NCP states that the deletion of the site from the NPL does not preclude eligibility for future response actions. For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received. A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following Site summary provides the Agency's rational for the proposal to delete this Site from the NPL.

Site Background and History

Naval Magazine Indian Island (formerly named Naval Ordnance Center, Pacific Division, Detachment Port Hadlock) is on Indian Island in Jefferson County, Washington, southeast of Port Townsend and east of Hadlock. This island is bordered by Kilisut Harbor to the east, Port Townsend Bay to the west and north, and Oak Bay and Portage Canal to the south. Indian Island is wholly owned by the Navy and is approximately five miles long and covers approximately 2,700 aces. No private residences are present on Naval Magazine Indian Island, however, there are approximately 14 military residences. A public highway connects the Olympic Peninsula with Indian Island and Marrowstone Island, an island east of Port Hadlock Detachment which supports fewer than 250 private residences. The nearest Olympic Peninsula communities are Port Hadlock and Irondale, both less than two miles west of Indian Island across Port Townsend Bay.

The Navy purchased the island in 1939 and primarily used it for munitions storage and handling. In total, nineteen locations at the Site were identified where contamination may have represented a risk to human health or the environment. Potential sources of hazardous substances identified included municipal and industrial landfills, drum and container storage areas, above and below ground storage tanks, burn pits, and disposal pits. Disposal activities at several site locations resulted in soil, groundwater, sediment and shellfish contamination. The contaminants were ordnance compounds, heavy metals, polychlorinated biphenyls (PCBs), and pesticides. Naval Magazine Indian Island was proposed for listing on the NPL on June 23, 1993 (58 ance FR 34018) and listed to the NPL on May 31, 1994 (59 FR 27989).

All locations have been investigated and determined to require no cleanup action or have been cleaned up to a condition that allows for unlimited use and unrestrictive exposure, except for the Northend Landfill. All investigation and cleanup activities were conducted by the Navy pursuant to the Interagency Agreement between the Navy, EPA, and Ecology. A summary of cleanup activities conducted at the Site can be found in the Final Closeout Report which is available at the information repositories. More detailed information about CERCLA activities at the Site can be obtained in the Administrative Record. Following is a discussion of remedial activities conducted at the Northend Landfill.

Northend Landfill (Also Referred to as Site 10)

The Northend Landfill is an approximately 3.7-acre landfill on the north end of Naval Magazine Indian Island. The site is relatively flat and is covered with grass. The landfill is located on Boggy Spit; it extends to the beach and had partially eroded onto the beach. This site was used as the primary landfill for the island from about 1945 until the mid-1970s. An incinerator burned materials at the site from the 1940s to 1953. Materials reportedly disposed of in the landfill include paint, thinners, strippers, oil, lead and zinc batteries, asbestos, submarine nets, metal parts, polyurethane resins, and zinc-plating slag. Various site investigations have been conducted at the landfill since 1987, including soil, groundwater, marine sediment, and shellfish sampling, with chemical analyses for a wide range of constituents. Low concentrations of semivolatile organic compounds, pesticides, and metals were detected in the soil and groundwater. The results of the investigation were included in the final remedial investigation/feasibility study (RI/FS) . Concurrent with the RI/FS, human health and ecological risk assessments were completed by the Navy in 1993.

Selected Remedy for the Northend Landfill

To mitigate potential risks posed to human health and the environment, the ROD selected the following remedial actions for the landfill:

—Placing a landfill cap over approximately 3.7 acres.
—Placing erosion protection along approximately 900 linear feet of the landfill perimeter and shoreline.
—Removal of eroded landfill debris located in the intertidal area, excavating landfill contents from the water edge of the landfill in order to construct the erosion protection.
—Implementing institutional controls, which include a temporary prohibition on shellfish harvesting at Beaches 1, 2 and 19 around Boggy Spit and land use restrictions for

residential use and farming. Upon base closure, deed restrictions on activities destructive to the cap and erosion protection will be attached to any property transfer, and requirements for continued operation and maintenance of the landfill cap and erosion protection will be addressed.

—Conducting a monitoring program for groundwater, sediment, and shellfish. Groundwater monitoring will be used to measure the protectiveness of the landfill cap by monitoring the level of contaminants in the pathway from the landfill to marine habitat. The results of shellfish monitoring will be used to determine when the shellfish are safe to eat. The results of the monitoring program will be reviewed in detail at the conclusion of the monitoring period to determine whether additional monitoring is necessary.

—Conducting regular maintenance and inspection of the landfill cap and the erosion protection, particularly after storm events.

—Conducting five-year reviews.

Cleanup

Mobilization and remedial construction began in July 1996. The implementation of archaeological mitigation field activities and collection of vegetation (*e.g.*, willow whips and dune grass) to be used in shoreline protection system began concurrently with construction mobilization. In August and September 1996, work progressed to the installation of the armor-rock section of the shoreline protection system in the High Energy Area and the quarry spall base and bench for the Low and Very Low Energy Areas. Approximately 1,000 cubic yards of excavated material from the installation of the armor-rock section were re-graded over the old landfill surface and then compacted. The approximately 10,000 cubic yards of imported material used for the test fills were re-graded and compacted over the site to establish a rough grade. Additional import material was placed to establish a final grade. To reduce environmental impacts, waste was not relocated or disposed of off site. Rather, landfill waste excavated from the intertidal area during beach cleanup and armor-rock placement was placed and capped within the landfill. As a result, no waste characterization sampling and analysis were conducted during the remedial construction. After the final grade was established in October 1996, a gas collection system was installed in the landfill area. The purpose of the landfill gas system was to vent landfill gas (although none had been detected in studies done for the Olympic Air Pollution Control Authority) and, more importantly, to equalize air pressure under the cap from wave action. Various components of the landfill cap (covering approximately three acres), soil cover, and storm drains were installed as weather allowed from October 1996 through January 1997. On September 26, 1997, the Navy issued the Preliminary Closeout Report signifying successful completion of construction activities. EPA and Ecology concurred with the findings in the report.

Operation and Maintenance

The ROD required that the selected remedy for the Northend Landfill include an O&M program to be conducted by the Navy. O&M activities began in 1997, immediately following completion of the Remedial Action for the landfill. O&M activities are described in the O&M Plan and include inspection, maintenance, and repair of the functional features of the landfill cap and shoreline protection system. These functional features include the landfill cap system, landfill gas collection system, landfill perimeter road, stormwater drainage system, irrigation system, hillside and site access road inspection, log revetment/anchor system, armor-rock shoreline protection system, and vegetated geogrid. Pursuant to the 2004 Explanation of Significant Differences (ESD), the O&M Plan was revised to include institutional controls requirements.

Five-Year Reviews

CERCLA requires a five-year review of all sites with hazardous substances remaining above health-based levels for unrestricted use of the site. Since the cleanup of the Northend Landfill utilized containment of hazardous materials as the method to reduce risks, the 5-year review process will be used to insure that hazardous substances remain encased within the landfill and that human health and the environment continue to be protected. In September 2000, the Navy conducted the first 5-year review for the Site under the oversight of EPA and Ecology. The 2000 5-year review concluded that the remedy is protective of human health and the environment. Subsequent five-year reviews will be completed no later than five years after the date of the previous five-year review.

Institutional Controls

The ROD requires institutional controls as a component of the selected remedy for the Northend Landfill including a temporary prohibition on shellfish harvesting at beaches around Boggy Spit and land use restrictions for residential use and farming.

An Explanation of Significant Differences (ESD) was signed on November 19, 2004, for the Record of Decision pertaining to the Northend Landfill at the Naval Magazine Indian Island. The ESD clarifies both the site-specific institutional control requirements and establishes the requirement for how the Navy will implement, maintain, and monitor these site-specific requirements for the Northend Landfill. Institutional controls are needed at the landfill because it contains hazardous substances above levels that allow for unlimited use and unrestricted exposure. Human health and the environment will be protected as long as the institutional controls are maintained by the Navy. By addressing the institutional controls requirements in greater detail, the ESD clarified but did not change the selected remedies. The ESD affirmed that the selected remedies remain protective of human health and the environment, comply with federal and state requirements that were identified in the ROD as applicable or relevant and appropriate to the remedial action at the time of the original ROD, and are cost effective.

Major Community Involvement Activities

The Navy, with the support of EPA and Ecology, has maintained an ongoing commitment to community involvement since preparation of the initial Community Relations Plan in 1989. The community has been informed of progress at the Site through newspaper ads, fact sheets, open houses, and public meetings. The Proposed Plan was circulated for public review and comment prior to preparation of the Record of Decision. Key documents have been available for review at the nearest public library located in Port Hadlock. A Technical Review Committee, consisting of interested community members and representatives of various governmental entities, was established in 1991 and meet periodically to discuss Site related issues. The Technical Review Committee was replaced by a Restoration Advisory Board in 1995 and met periodically until major work at the Site was completed in 2000.

The major documents and information which EPA relied on or considered in deciding that the Site can be deleted from the NPL, are available for the public to review at the information repositories.

Applicable Deletion Criteria/State Concurrence

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if ''responsible parties have implemented all appropriate response actions required.'' EPA, with the concurrence of the State of Washington, believe that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket.

State Concurrence

The Washington Department of Ecology concurs with the proposed deletion of the Naval Magazine Indian Island Site from the NPL.

Dated: March 18, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 05–7411 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 70, No. 72
Friday, April 15, 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.

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

Time: Tuesday, April 19, 2005—9 a.m.–3 p.m.

Place: The African Development Foundation, Conference Room, 1400 I Street, NW., Washington, DC 20005.

Date: April 19, 2005.

Status:

Open Session

Tuesday, 9 a.m. to 1 p.m.

Closed Executive Session

Tuesday, 1 p.m. to 3 p.m.

Agenda

Tuesday, April 19, 2005

9 a.m.—Chairman's Report

10 a.m.—President's Report

1 p.m.—Executive Session

3 p.m.—Adjournment for day

If you have any questions or comments, please direct them to Doris Martin, General Counsel, who may be reached at (202) 673–3916.

Nathaniel Fields,

President.

[FR Doc. 05–7652 Filed 4–13–05; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–019–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the humane handling, care, treatment, and transportation of marine mammals under the Animal Welfare Act.

DATES: We will consider all comments that we receive on or before June 14, 2005.

ADDRESSES: You may submit comments by any 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. 05–019–1, 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. 05–019–1.

Reading Room: You may read 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: For information concerning the Animal Welfare Act regulations and standards for marine mammals, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 734–7833. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare, 9 CFR Part 3, Marine Mammals.

OMB Number: 0579–0115.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal Welfare Act standards and regulations have been promulgated to promote and ensure the humane handling, care, treatment, and transportation of regulated animals. The regulations in 9 CFR part 3, subpart E, cover marine mammals.

The regulations in 9 CFR part 3, subpart E, require facilities to complete a number of information collection activities, such as written protocols for cleaning, contingency plans, daily records of animal feeding, water quality records, documentation of facility-based employee training, plans for any animals kept in isolation, medical records, a description of the interactive program, and health certificates for transportation of marine mammals. These information collection activities do not mandate the use of any official government forms. APHIS needs this information to ensure compliance with the regulations intended to ensure the humane care and treatment of marine mammals.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of

information is estimated to average 0.1698175 hours per response.

Respondents: Employees or attendants of USDA licensed/registered marine mammal facilities.

Estimated annual number of respondents: 2,197.

Estimated annual number of responses per respondent: 24.847.

Estimated annual number of responses: 54,588.

Estimated total annual burden on respondents: 9,270 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of April 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–7584 Filed 4–14–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 05–010N]

Exemption for Retail Store Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of adjusted dollar limitations.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing new dollar limitations on the amount of meat and meat food products and poultry products that a retail store can sell to hotels, restaurants, and similar institutions without disqualifying itself for exemption from Federal inspection requirements. By reason of FSIS' regulations, for calendar year 2005 the dollar limitation for meat and meat food products has been increased from $53,600 to $54,500 and for poultry products from $43,600 to $45,800. FSIS is increasing the dollar limitations from calendar year 2004 based on price changes for these products evidenced by the Consumer Price Index.

DATES: Effective Date: This notice is effective April 15, 2005.

FOR FURTHER INFORMATION CONTACT: John O'Connell, Directives and Economic Analysis Staff, Office of Policy, Program, and Employee Development, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700; telephone (202) 720–0345, fax (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide that the statutory provisions requiring inspection of the slaughter of livestock or poultry, and the preparation or processing of meat and meat food and poultry products, do not apply to the types of operations traditionally and usually conducted at retail stores and restaurants, when those operations are conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities (21 U.S.C. 454(c)(2)and 661 (c)(2)). In title 9 of the Code of Federal Regulations §§ 303.1(d) and 381.10(d), FSIS regulations address the conditions under which requirements for inspection do not apply to retail operations involving the preparation or processing of meat or poultry products.

Under these regulations, sales to hotels, restaurants, and similar institutions disqualify a store for exemption if they exceed either of two maximum limits: 25 percent of the dollar value of total product sales or the calendar year dollar limitation set by the Administrator. The dollar limitation is adjusted automatically during the first quarter of the year if the Consumer Price Index (CPI), published by the Bureau of Labor Statistics, indicates an increase or decrease of more than $500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted dollar limitations in the **Federal Register**. (See paragraphs (d)(2)(iii)(*b*) and (d)(2)(iii)(*b*) of §§ 303.1 and 381.10.)

The CPI for 2004 reveals an average annual price increase for meat and meat food products of 1.6 percent and an annual average price increase for poultry products of 5.1 percent. When rounded off to the nearest $100.00, the price increase for meat and meat food products is $900 and the price increase for poultry products is $2,200. Because the price of meat and meat food products and the price of poultry products have increased by more than $500, in accordance with §§ 303.1 (d)(2)(iii)(*b*) and 381.10 (d)(2)(iii)(*b*) of the regulations, FSIS is increasing the dollar limitation on sales to hotels, restaurants, and similar institutions to $54,500 for meat and meat food products and to $45,800 for poultry products for calendar year 2005.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on: April 11, 2005.

Barbara Masters,

Acting Administrator.

[FR Doc. 05–7555 Filed 4–14–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 05–015N]

Food Security Workshops

AGENCY: Food Safety and Inspection Service.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing a series of workshops from May through June 2005, to discuss food security awareness, the FSIS Industry Self-Assessment Checklist for Food Security, food security plans, and FSIS Directive 5420.1, Revision 1, Food Security Verification Procedures.

DATES: Further information on these workshops will be announced on the FSIS Web site, *http://www.fsis.usda.gov/*. and through the Constituent Update; see Additional Public Notification below.

The tentative upcoming workshops are:

Dallas, Texas on May 14;
Oakland, California on May 21;
Chicago, Illinois on June 4;
Savannah, Georgia on June 11;
Newark, New Jersey on June 25;
Philadelphia, Pennsylvania on July 9.

ADDRESSES: Information on specific sites will be provided through the FSIS Web site and Constituent Update. FSIS highly recommends that attendees pre-register for the workshops. To pre-register for this workshop, call 1–800–485–4424 and follow the prompts. You may also pre-register at *http://www.fsis.usda.gov/News/Meetings_&_Events/*

A tentative agenda will be available in the FSIS Docket Room and on the Internet at *http://www.fsis.usda.gov*. **FOR FURTHER INFORMATION CONTACT:** Ms. Diane Jones of the FSIS Strategic Initiatives, Partnerships and Outreach Staff at (202) 720–9692. If a sign language interpreter or other special accommodation is required, please contact Ms. Jones no later than one week before the workshop of interest.

For technical information, please contact Ms. Mary Cutshall, Director, Strategic Initiatives, Partnerships and Outreach Staff, Office of Public Affairs, Education and Outreach at (202) 690–6520.

SUPPLEMENTARY INFORMATION:

Background

In May 2002, the Food Safety and Inspection Service (FSIS) issued the FSIS Security Guidelines for Food Processors to assist meat, poultry, and egg product establishments in identifying ways to strengthen their food security protection. In August 2003, the FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products were issued. These guidelines focused on enhancing food safety and security in the transportation and distribution segments of the supply chain. These guidelines are voluntary and provide recommendations about the types of security measures that may be used to prevent contamination of meat, poultry, and egg products during processing, transportation, and storage. A particularly important aspect of the guidelines is the suggestion that each facility should develop and implement a Food Security Plan. The purpose of the workshops is to provide additional guidance about the development and implementation of food security plans for meat, poultry, and egg processing facilities, import establishments, and identification warehouses. The Food Security Checklist, Food Security Models, and FSIS Directive 5420.1, Revision 1 are tools to aid affected entities in developing the security plans.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/*.

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Done at Washington, DC on April 11, 2005.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 05–7494 Filed 4–14–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Clear Prong Project, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Cascade Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a resource management project in the Clear Creek drainage. The entire project area is located in watersheds that drain into Clear Creek, which in turn drains into the North Fork Payette River below Cascade Reservoir. The 11,056-acre project area is located 10 miles east of Cascade, Idaho, and about 120 miles north of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision. At this time, no public meetings to discuss the project are planned.

Proposed Action: Eight objectives have been identified for the project: (1) Relative to Douglas-fir beetle, mountain pine beetle, western pine beetle, western spruce budworm, and/or dwarf mistletoe, manipulate the structures, densities and compositions of stands to maintain a low or moderate susceptibility level, or to decrease susceptibility to a low or moderate level; (2) reduce fuel loads and ladder fuels through the use of prescribed fire where existing forest types indicate such an action could be accomplished without substantial mortality of the overstory trees, and where topographic features would make the use of prescribed fire a practical management action; (3) retain the existing size class of stands currently identified as large tree and manipulate the structure of small and medium tree size class stands to accelerate their movement toward the large tree size class; (4) reduce the densities of stands currently identified as large tree size class to maintain or

restore canopy closures within desired conditions; (5) consistent with the particular habitat type, discriminate against shade-tolerant species such as grand fir and subalpine fir and encourage retention and recruitment of several species; (6) improve long-term stand growth to or near levels indicative of sustainable forests; (7) provide wood products to support local and regional economies; and (8) reduce management-induced sediment associated with roads 409, 405B, 405B2, 405C, 405D, and 417HX1.

The Proposed Action would implement silvicultural activities, including thinning of submerchantable trees and prescribed fire, on 2,875 acres. An estimated 9.0 MMBF would be removed using tractor, off-road jammer, skyline, and helicopter yarding systems. The Proposed Action would employ a variety of silvicultrual prescriptions including commercial thin, commercial thin with prescribed fire, sanitation/improvement, sanitation/improvement with prescribed fire, seed cut shelterwood, clearcut with reserve trees, thinning of submerchantable trees, thinning of submerchantable trees with prescribed fire, and prescribed fire.

The Proposed Action would restore an estimated 0.8 mile of the 409 road through maintenance activities to reduce sedimentation. Specifically, gravel would be applied to the surface of the 409 road from near the 409/409D intersection to Clear Creek Summit. Roughly 1.6 miles of temporary road would be constructed to facilitate silvicultrual activities.

An estimated 4.4 miles of existing road (405B, 405B2, 405C, 405D, and 417HX1) not needed for the long-term management of the area would be decommissioned to reduce future maintenance needs and to reduce sedimentation. These five roads would be removed from the transportation system.

Preliminary Issues: Preliminary concerns with the Proposed Action include potential impacts on water quality and terrestrial wildlife species.

Possible Alternatives to The Proposed Action: One alternative to the Proposed Action that has been discussed thus far is a no action alternative. Other alternatives will likely be developed as issues are identified and information received.

Decisions To Be Made: The Boise National Forest Supervisor will decide the following: (1) Should vegetation be managed within the project area at this time, and if so, which stands should be treated and what silvicultural systems applied? (2) Should temporary roads be built at this time, and if so, how many miles should be built and where should they occur within the project area? (3) Should existing classified roads within the project area receive maintenance activities to reduce sedimentation, and if so, where within the project area? (4) Should portions of roads 405B, 405B2, 405C, 405D, and 417HX1 be decommissioned at this time? (5) Based on the completed Clear Prong Project Roads Analysis, which roads should be adopted as the minimum transportation system? (6) What design features and/or mitigation measures should be applied to the project?

DATES: Substantive comments concerning the proposed project and analysis are encouraged and should be postmarked or received within 30 days following publication of this announcement in the **Federal Register**.

ADDRESSES: Substantive comments should be addressed to the Cascade Ranger District, ATTN: Keith Dimmett, PO Box 696, Cascade, ID 83611 or sent electronically to *comments-intermtn-boise-cascade@fs.fed.us*. Electronic comments must be submitted in plain text or another format compatible with Microsoft Word. Substantive comments are those within the scope of, are specific to, and have a direct relationship to the proposed action and include supporting reasons that the Responsible Official should consider in reaching a decision. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Keith Dimmett at the address mentioned above or by calling 208–382–7400.

Schedule: Draft Environmental Impact Statement (DEIS), June 2005. Final Environmental Impact Statement (FEIS), August 2005.

SUPPLEMENTARY INFORMATION: An estimated 2,194 acres of the Peace Rock Inventoried Roadless Area (IRA) and an additional 252 acres of the Stony Meadows IRA lie within the Clear Prong Project Area. With the exception of a small portion of the prescribed fire, none of the activities associated with the Proposed Action would occur within either IRA.

The entire project area drains into Clear Creek, which was listed in 1998 as impaired under section 303(d) of the Clean Water Act. The pollutant of concern was sediment. There is currently no TMDL in place.

The project area lies within Management Area 17 (North Fork Payette River), discussed on pages III–290 through III–301 in the Forest Plan. Several Management Prescription Categories (MPC's) apply within this Management Area (MA). However, only MPC 4.1c and 5.2 occur within the project area. With the exception of a small portion of the prescribed fire, the Proposed Action includes management activities within MPC 5.2 only.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviews of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the DEIS 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. it is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Richard A. Smith, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: March 31, 2005.

Richard A. Smith,

Forest Supervisor.

[FR Doc. 05–7478 Filed 4–14–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Natural Resources Conservation Service (NRCS), has prepared an Environmental Assessment consistent with the National Environmental Policy Act of 1969, as amended. The Goshute Spring Range Improvement is a federally assisted action authorized for planning under Public Law 76–159 the Soil Conservation and Domestic Allotment Act, and federal financial assistance through the Enviromental Quality Incentives Program. An Environmental Assessment was undertaken in conjunction with the development of the conservation plan. This assessment was undertaken in conjunction with local, state, and federal agencies as well as the Goshute Tribal Government, and other interested parties and individuals. Upon review of the information in the Goshute Spring Range Improvement, the State Conservationist, NRCS, Utah, made a Finding of No Significant Impact (FONSI) and the determination was made that no environmental impact statement is required to support the Goshute Spring Range Improvement. 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 Goshute Spring Range Improvement, Goshute Reservation, Ibapah, Utah. Written comments regarding this action may be submitted to: Sylvia Gillen, State Conservationist, USDA/NRCS, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, UT 84138–1100. Comments must be received no later than 30 days after this notice is published.

EFFECTIVE DATE: April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Sylvia Gillen, State Conservationist, Natural Resources Conservation Service, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, Utah 84138–1100; telephone (801) 524–4550.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action documents that the project will not cause significant local, regional, state, or national impacts on the human environment. The findings of Sylvia Gillen, State Conservationist, indicate that the preparation and review of an environmental impact statement is not needed for this project.

The proposed action is the conversion of approximately 1,000 acres of Pinyon-Juniper sites in pasture 5a to a grassland site. The conversion would be accomplished through chaining, prescribed burning, and seeding. The site would be chained in the spring, burned in the late summer or fall, and aerial seeded in the fall followed by back chaining to cover the seed.

Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Sylvia Gillen, Utah State Conservationist. Copies of the Environmental Assessment and FONSI may be obtained from Mr. Jeremy Maestas, Acting District Conservationist, USDA–NRCS, 1030 West 5370 South, Suite 100, Murray, Utah 84123; telephone: (801) 263–3204, extension 107.

No administrative action on implementation of this project will be taken until 30 days after the date of this notice is published.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.902, Soil and Water Conservation and Environmental Quality Incentive Program 10.912.)

Signed in Salt Lake City, Utah, on April 8, 2005.

Gary J. Jann,

Assistant State Conservationist.

[FR Doc. 05–7579 Filed 4–14–05; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Effective Date: May 15, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703)603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: On February 11, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 F.R. 7230) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Grounds Maintenance, VA Medical Center, 4101 Woolworth Avenue, Omaha, Nebraska.
NPA: Goodwill Specialty Services, Inc., Omaha, Nebraska.
Contracting Activity: VA Medical Center Nebraska-W. Iowa Health Care Sys, Omaha, Nebraska.

Service Type/Location: Medical Transcription, Veterans Affairs Medical Center, Loma Linda, Loma Linda, California.
NPA: National Telecommuting Institute, Inc., Boston, Massachusetts.
Contracting Activity: VA Network Business Center (664/NBC/MP), San Diego,

California.
Service Type/Location: Medical Transcription, Veterans Affairs Medical Center, Long Beach, Long Beach, California.
NPA: National Telecommuting Institute, Inc., Boston, Massachusetts.
Contracting Activity: VA Network Business Center (664/NBC/MP), San Diego, California.
Service Type/Location: Medical Transcription, Veterans Affairs Medical Center, San Diego, San Diego, California.
NPA: National Telecommuting Institute, Inc., Boston, Massachusetts.
Contracting Activity: VA Network Business Center (664/NBC/MP), San Diego, California.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 05–7568 Filed 4–14–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must be Received On or Before: May 15, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions: If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products:

Product/NSN: Bag, Sand Polypropylene, (50% of the total polypropylene sand bag only requirement for Defense Supply Center Philadelphia. Does not include the combination of polypropylene and acrylic)
8105–00–142–9345,
8105–01–336–6163,
8105–01–467–0402.
NPA: Southeast Vocational Alliance, Inc., Houston, Texas.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Glow Plug, 2920–01–151–3627.
NPA: Shares Inc., Shelbyville, Indiana.
Contracting Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Targets, Silhouette,
6920–00–600–6874—Paper Matte Target,
6920–00–795–1806—Kneeling Position,
6920–00–951–3956—Standing Man Holding Pistol.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Service:

Service Type/Location: Janitorial/Custodial, Basewide, Fort Dix, New Jersey.
NPA: Occupational Training Center of Burlington County, Mt. Holly, New Jersey.
Contracting Activity: Army Reserve Contracting Center, Fort Dix, New Jersey.

Deletions:

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products:

Product/NSN: Flashlight,
6230–01–513–3270—3D, Silver,
6230–01–513–3273—3D, Red,
6230–01–513–3287—5D, Blue,
6230–01–513–3288—5D, Red,
6230–01–513–3291—4D, Blue,
6230–01–513–3301—5D, Silver,
6230–01–513–3308—4D, Silver.
NPA: Central Association for the Blind & Visually Impaired, Utica, New York.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.
Product/NSN: Pen, Gel, Executive, 7520–00–NIB–1491.
NPA: West Texas Lighthouse for the Blind, San Angelo, Texas.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.
Product/NSN: Super Disk LS–120 Imation, 7045–01–455–2291.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Test Kit, Oil Condition, 6630–01–096–4792.
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, Pennsylvania.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 05–7569 Filed 4–14–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Correction to Requirements

In the document appearing on page 13165/13166, FR Doc E5–1192, in the issue of March 18, 2005, in the third column on page 13165 and the first column on page 13166, the Committee published a proposed addition of Gloves, Flyers' Summer Type GS/FRP–2; GS/FPP–2 (Exigency or surge requirements up to 240,000 pairs annually which are over and above the current contractors' requirements for a period up to September 2007). The requirements information is changed to ready 36,000 annually and the comment period is extended until May 15, 2005 to give interested parties as chance to comment. Comments should be sent to Sheryl D. Kennerly, telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 05–7567 Filed 4–14–05; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Nevada State Advisory Committee in the Western Region will convene at 10 a.m. (P.d.t.) and adjourn at 11 a.m., Friday, May 6, 2005. The purpose of the conference call is to orient new members and discuss a proposed project on the status of civil rights in Nevada.

This conference call is available to the public through the following call-in number: 1–800–473–7795, access code number 40185325. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, May 5, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–7594 Filed 4–14–05; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Washington State Advisory Committee in the Western Region will convene at 10 a.m. (P.d.t.) and adjourn at 11 a.m., Thursday, May 12, 2005. The purpose of the conference call is to orient new members and discuss proposed project on Native American health care issues.

This conference call is available to the public through the following call-in number: 1–800–473–6927, access code number 40185331. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Wednesday, May 11, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–7596 Filed 4–14–05; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–485–803)

Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Extension of Preliminary Results for 2003–2004 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–8029.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On September 22, 2004, the Department published a notice of initiation of administrative review of the antidumping duty order on certain cut–to-length carbon steel plate from Romania, covering the period August 1, 2003, through July 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 56745 (September 22, 2004). The preliminary results for this review are currently due no later than May 3, 2005.

Extension of Time Limits for Preliminary Results

On April 4, 2005, the Department initiated a sales–below-cost investigation in this review. *See* Memorandum to Richard Weible, Office Director, through Abdelali Elouaradia, Program Manager, from Patrick Edwards

and John Drury and Ernest Gziryan regarding IPSCO Steel Inc.'s Allegation of Sales Below the Cost of Production for Ispat Sidex, S.A. On April 4, 2005, the Department also issued Section D of the Antidumping Questionnaire to Sidex. The current deadline for the preliminary results in this review is May 3, 2005. The Department requires additional time to review and analyze the Section D response when submitted, issue supplemental cost questionnaires, if necessary, and possibly verify the sales and cost information submitted by Ispat Sidex S.A. Hence, it is not practicable to complete this review within the originally anticipated time limit.

Section 751(a)(3)(A) of the Act and Section 351.213(h)(2) of the Department's regulations allow the Department to extend the deadline for the preliminary results to a maximum of 365 days from the last day of the anniversary month of the order. For the reasons noted above, the Department is extending the time limit for completion of the preliminary results to no later than August 31, 2005, in accordance with section 751(a)(3)(A) of the Act. We intend to issue the final results no later than 120 days after publication of the notice of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 11, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1787 Filed 4–15–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–357–812)

Honey from Argentina: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on honey from Argentina produced and/or exported by Asociacion de Cooperativas Argentinas (ACA), Compania Apicola Argentina (CAA), HoneyMax S.A. (HoneyMax), Nexco S.A. (Nexco), Nutrin S.A (Nutrin), Seylinco S.A. (Seylinco), and TransHoney S.A. (TransHoney). The period of review (POR) is December 1, 2002, to November 30, 2003. Based on our analysis of comments received, the margin calculations for these final results do not differ from the preliminary results. The margin calculations for these final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Angela Strom for ACA, Nexco and Nutrin, Brian Sheba for HoneyMax and Seylinco, David Cordell for TransHoney and CAA, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–2704, (202) 482–0145, (202) 482–0408, (202) 482–0469 respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 2004, the Department published the preliminary results of the 2002–2003 antidumping duty administrative review of honey from Argentina. *See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 77195 (Preliminary Results). The review covers sales by seven exporters: ACA, CAA, HoneyMax, Nexco, Nutrin, Seylinco, and TransHoney, (collectively, the respondents), and the period December 1, 2002, through November 30, 2003. In the preliminary results, we invited parties to comment. CAA submitted a case brief January 26, 2005. Neither Petitioner nor any of the other respondents submitted direct comments, and no party submitted filed rebuttal comments.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under this order is dispositive.

Analysis of Comments Received

Comment 1: Company–specific Dumping Margins.

In the *Preliminary Results*, the Department listed only the name of the requesting company, CAA. CAA argues the final results should include the names of both Mielar and CAA, as both CAA and Mielar were treated by the Department as a single entity for purposes of the review. CAA argues both CAA and Mielar filed combined questionnaire responses, were verified together, and sales and expense information for both companies was used in the dumping analysis conducted by the Department. CAA contends the preliminary results makes clear that the ''Department determined that CAA, Mielar and El Chelibo (Chelibo) are affiliated....and that the Department should treat the three companies as a single entity for the purposes of this administrative review.'' *See* CAA/Mielar's Case Brief at 2.

CAA believes the Department should list both exporting company names, namely CAA and Mielar, in the company–specific rates and in liquidation and cash deposit instructions issued to U.S. Customs and Border Protection (CBP) to ensure there is no error or misunderstanding. CAA cites a number of decisions including *Stainless Steel Wire Rods From India: Preliminary Results of Antidumping Duty Administrative Review, Intent To Revoke Order In Part, and Extension of Time for the Final Results of Review*, 70 FR 1413, 1416 (January 7, 2005) (*Stainless Steel Wire Rod from India*), where the Department decided ''to treat Isibars and its affiliates as a single entity and calculate a single dumping margin.'' *See* CAA/Mielar's Case Brief at 5 and 6 for other case citations.

Department's Position: We agree with CAA and Mielar because both our Preliminary Results and the memorandum entitled, ''Relationship of Compania Apicola Argentina S.A., (CAA) El Chelibo S.A. (Chelibo), and Mielar, S.A. (Mielar) in the 2002–2003 Administrative Review of AD Order on Honey from Argentina'' dated June 30, 2004, illustrate ''that the companies should receive a single antidumping duty rate.'' Accordingly, we will assign a single rate to the entity composed of CAA, Mielar and Chelibo.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made no changes in the margin calculation. However, we

have made changes to the company names within the manufacturer/exporter column of the weighted average margin table.

Final Results of Review

We determine that the following dumping margins exist for the period December 1, 2002, through November 30, 2003.

Manufacturer / Exporter	Weighted Average Margin (percentage)
Asociacion de Cooperativas Argentinas	0
Compania Apicola Argentina S.A., Mielar S.A., and El Chelibo S.A.	0
HoneyMax S.A	0
Nexco S.A.	0.38 (de minimis)
Nutrin S.A.	55.15
Seylinco S.A.	0
TransHoney S.A	0

Assessment

The Department shall determine, and the CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. We will direct CBP to assess the resulting assessment rate against the entered customs values for the subject merchandise on each of the importer's entries during the POR.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act): (1) For the companies named above, the cash deposit rates will be the rates for these firms shown above, except that, for exporters with de minimis rates (i.e., less than 0.5 percent), no deposit will be required; (2) for previously–reviewed producers and exporters with separate rates, the cash deposit rate will be the company–specific rate established for the most recent period for which they were reviewed; and (3) for all other producers and exporters, the rate will be 30.24 percent, the ''all others'' rate established in the less than fair value investigation as established in the Antidumping Duty Order. *See Notice of Antidumping Duty Order; Honey From Argentina*, 66 FR 63672 (Dec. 10, 2001). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: April 8, 2005.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1788 Filed 4–15–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–357–812

Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of 19 companies under the antidumping duty order of honey from Argentina for the period December 1, 2003 to November 30, 2004. This rescission in part, is based on the timely withdrawal of the request for review by the respective interested party that requested the review. A complete list of the companies for which the administrative review is being rescinded is provided in the background section below.

DATES: *Effective Date:* **APRIL 15, 2005.**

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone (202) 482–0408 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under the scope of the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise under this order is dispositive.

Background:

On December 1, 2004, the Department published its notice of an opportunity to request a review in the **Federal Register**. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 69889 (December 1, 2004). In response, on December 30, 2004, the American Honey Producers Association and the Sioux Honey Association (collectively 'petitioners') requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2003, through November 30, 2004. The petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by 24 Argentine producers/exporters. In addition, the Department received requests for review from two Argentine exporters included in the

petitioners' request and from one additional exporter.

On January 31, 2005 the Department initiated a review on all 25 companies for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005) and the *Corrections Notice*, 70 FR 7143 (February 10, 2005).

On February 22, 2005, petitioners submitted timely withdrawal of requests for review of the following companies: Centauro S.A., Comexter Robinson S.A., Compa Inversora Platense S.A., ConAgra Argentina S.A., Coope–Riel Ltda., Cooperativa DeAgua Potable y Otros, Establecimiento Don Angel S.r.L, Food Way, S.A., Francisco Facundo Rodriguez, Jay Bees, Jose Luis Garcia, Navicon S.A., Parodi Agropecuaria S.A., Times S.A., and Mielar S.A. *See* Letter from petitioners to the Department, Honey From Argentina, (February 22, 2005), on file in the Central Records Unit (CRU), room B–099 of the main Department building. On February 24, 2005, both petitioners and Nexco (an exporter) submitted letters withdrawing their individual requests for review of Nexco. *See* letters from petitioners and from Nexco to the Department, Honey From Argentina, (February 24, 2005), on file in the CRU. On February 24, 2005, petitioner rescinded its withdrawal with respect to Mielar. On March 9, 2005, El Mana S.A. (an exporter) submitted a letter withdrawing its request for the administrative review of El Mana S.A. *See* letter El Mana S.A. to the Department, Honey From Argentina, (March 9, 2005), on file in the CRU. On March 31, 2005, petitioners submitted timely withdrawal of requests for review of the following companies: Compania Apicola Argentina (CAA), Mielar and TransHoney S.A. (TransHoney). See Letter from petitioners to the Department, Honey From Argentina, (March 31, 2005), on file in the Central Records Unit (CRU), room B–099 of the main Department building

Rescission in Part, of Administrative Review:

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review in whole or in part. The petitioners made a timely withdrawal of their requests for an administrative review within the 90–day deadline, in accordance with 19 CFR 351.213(d)(1) for the following companies: Centauro S.A., Comexter Robinson S.A., Compa Inversora Platense S.A., Compania Apicola Argentina S.A., ConAgra Argentina S.A., Coope–Riel Ltda., Cooperativa DeAgua Potable y Otros, Establecimiento Don Angel S.r.L, Food Way, S.A., Francisco Facundo Rodriguez, Jay Bees, Jose Luis Garcia, Mielar S.A., Navicon S.A., Parodi Agropecuaria S.A., Times S.A, and TransHoney S.A. Because petitioners were the only party to request the administrative review of these companies, we have accepted the withdrawal requests and we are rescinding this administrative review of the antidumping duty order on honey from Argentina covering the period December 1, 2003, through November 30, 2004 for the aforementioned companies.

With respect to Nexco, because both petitioners and the respondent requested the administrative review of Nexco, and because both parties submitted withdrawal requests, we are rescinding this administrative review with respect to Nexco. With respect to El Mana S.A., because the respondent requested the administrative review of El Mana S.A., and because El Mana S.A. submitted a timely withdrawal request, we are also rescinding this administrative review with respect to El Mana S.A.

The Department will issue appropriate assessment instructions directly to the CBP within 15 days of the publication of this notice. The Department will direct CBP to assess antidumping duties for these companies at the cash deposit rate in effect on the date of entry for entries during the period December 1, 2003 to November 30, 2004.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a)(2)(C) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 8, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1789 Filed 4–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Notice of Antidumping Duty Order: Magnesium Metal From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on magnesium metal from the People's Republic of China (''PRC''). On April 11, 2005, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry (Magnesium from China and Russia, Investigations Nos. 731–TA–1071 and 1072 (Final), Publication 3763, April 2005).

EFFECTIVE DATE: April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (''the Act''), on February 24, 2005, the Department published the *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From The People's Republic of China,* 70 FR 9037 (February 24, 2005) (''Final Determination''). An amended final determination was published on March 29, 2005 to correct ministerial errors that occurred in the calculation of the rates as published in the *Final*

Determination. See Notice of Amended Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China, 70 FR 15838 (March 29, 2005).

Scope of Order

The merchandise covered by the order is magnesium metal, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: Products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy'' [1] and thus are outside the scope of the existing antidumping orders on magnesium from the PRC (generally referred to as ''alloy'' magnesium).

The scope of the order excludes the following merchandise: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy;'' [2] (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form, by weight, and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[3]

The merchandise subject to the order is currently classifiable under items 8104.19.00 and 8104.30.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS items are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Antidumping Duty Order

On April 11, 2005, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC. In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from the PRC that are subject to the Department's affirmative critical circumstances finding. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of magnesium metal from the PRC. These antidumping duties will be assessed on all unliquidated entries of magnesium metal from the PRC entered, or withdrawn from the warehouse, for consumption on or after October 4, 2004, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Magnesium Metal From The People's Republic of China,* 69 FR 59187 (October 4, 2004) (''*Preliminary Determination*'').

With regard to the ITC negative critical circumstances determination, we will instruct Customs to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after July 6, 2004, but before October 4, 2004. July 4, 2004 is 90 days prior to October 4, 2004, the date of publication of the Department's preliminary determination in the **Federal Register**.

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of the PRC exports of the subject merchandise, we extended the four-month period to no more than six months. *See Preliminary Determination.* In this investigation, the six-month period beginning on the date of the publication of the preliminary determination ends on April 1, 2005. Furthermore, section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of magnesium metal from the PRC entered, or withdrawn from warehouse, for consumption on or after April 2, 2005, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final injury determination in the **Federal Register.**

Effective on the date of publication of the ITC's final affirmative injury determination, CBP officers will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

[2] This material is already covered by existing antidumping orders. *See Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995), and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[3] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from the PRC, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

antidumping duty margins as listed below. The ''PRC-wide'' rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

MAGNESIUM METAL FROM THE PRC

Manufacturer/exporter	Weighted-average margin percent
Tianjin	49.66
Guangling	49.66
PRC-Wide Rate*	141.49

*This is not a separate rate; the RSM[4] companies and Jiangsu Metals are subject to the PRC-wide rate.

This notice constitutes the antidumping duty order with respect to magnesium metal from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: April 12, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1790 Filed 4–14–05; 8:45 am]

BILLING CODE 3510–DS–P

[4] In the preliminary determination, we determined that the following companies were collapsed members of the RSM group of companies for the purposes of this investigation: Nanjing Yunhai Special Metals Co., Ltd. (''Yunhai Special''), Nanjing Welbow Metals Co., Ltd. (''Welbow''), Nanjing Yunhai Magnesium Co., Ltd. (''Yunhai Magnesium''), Shanxi Wenxi Yunhai Metals Co., Ltd. (''Wenxi Yunhai''). See Memorandum to Laurie Parkhill, Director, Office 8, NME/China Group, from Laurel LaCivita, Senior Case Analyst, through Robert Bolling, Program Manager: *Antidumping Duty Investigation of Magnesium Metal from the People's Republic of China: Affiliation and Collapsing of Members of the RSM Group and its Affiliated U.S. Reseller, Toyota Tsusho America*, Inc., dated September 24, 2004.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (ITC), the Department is issuing an antidumping duty order on magnesium metal from the Russian Federation (Russia). On April 11, 2005, the ITC notified the Department of its affirmative determination of injury to a U.S. industry (*Magnesium from China and Russia,* Investigations Nos. 731–TA–1071 and 1072 (Final), Publication 3763, April 2005).

EFFECTIVE DATE: April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Kimberley Hunt, or Joshua Reitze at (202) 482–3148, (202) 482–1272, and (202) 482–0666, respectively; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION

Background

The final determination in this investigation was published on February 24, 2005. *See Magnesium Metal From the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value,* 70 FR 9041 (February 24, 2005) (*Final Determination*). An amended final determination was published on March 29, 2005, to correct ministerial errors which occurred in the calculation of the rates as published in the *Final Determination. See Magnesium Metal From the Russian Federation: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 70 FR 15837 (March 29, 2005) (*Amended Final Determination*). In the *Amended Final Determination,* the Department amended the rate of one respondent as well as the all others' rate.

Scope of the Order

The merchandise covered by this order is magnesium metal (also referred to as magnesium), which includes primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this order includes blends of primary and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) Products that contain at least 99.95 percent magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, whether or not conforming to an ''ASTM Specification for Magnesium Alloy.''

The scope of this order excludes: (1) Magnesium that is in liquid or molten form; and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[1]

The merchandise subject to this order is currently classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On April 11, 2005, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the ITC notified

[1] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not chemically combined in liquid form and cast into the same ingot.

the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of magnesium from Russia. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of magnesium from Russia. These antidumping duties will be assessed on all entries of magnesium from Russia entered, or withdrawn from warehouse, for consumption on or after October 4, 2004, the date on which the Department published its notice of preliminary determination in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Magnesium Metal From the Russian Federation,* 69 FR 59197 (October 4, 2004) (*Preliminary Determination*).

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of the Russian exports of subject merchandise, we extended the four-month period to no more than six months. *See Preliminary Determination.* In this investigation, the six-month period beginning on the date of the publication of the *Preliminary Determination* ended on April 1, 2005. Furthermore, section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of magnesium from Russia entered, or withdrawn from warehouse, for consumption on or after April 2, 2005, and before the date of publication of the ITC 's final injury determination in the **Federal Register**. Suspension of liquidation will continue on or after this date.

Effective on the date of publication of the ITC's final affirmative injury determination, CBP officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The all others' rate applies to all manufacturers and exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
JSC AVISMA Titanium-Magnesium Works	21.71
Solikamsk Magnesium Works	18.65
All Others'	21.01

Pursuant to section 736(a) of the Act, this notice constitutes the antidumping duty order with respect to magnesium metal from Russia. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: April 12, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1791 Filed 4–14–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Meeting to Explore Feasibility of Establishing a NIST/Industry Consortium on Gene Expression Metrology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a pre-consortium meeting on May 16, 2005 to be held on the NIST campus in Boulder, Colorado. The goal of the one-day meeting is to evaluate industry interest in creating a NIST/industry consortium focused on gene expression metrology. The goals of such a consortium would include the development of measurement methods of known quality for microarray gene expression results. The consortium would be supervised and administered by NIST. Consortium research and development would be conducted by NIST staff members along with at least one technical representative from each participating member company. Membership in the Consortium is open to manufacturers of complete microarray gene expression systems (*i.e.* systems which include all components required to measure a genome-wide expression profile form isolated RNA). Consortium Members will be required to provide the NIST staff members with a complete system representative of their technology platform to support measurement and standards development. The initial term of the consortium is intended to be three years.

DATES: The meeting will take place on May 17, 2005, at 8 a.m. to 5 p.m. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology (NIST), 325 Broadway Room 4550, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Marc Salit, Advanced Chemical Science Laboratory, Stop 8310, National Institute of Standards and Technology (NIST), Gaithersburg, MD 20899–8310. Telephone: (301) 975–3646; FAX: 301 975–5449; e-mail: *salit@nist.gov.*

SUPPLEMENTARY INFORMATION: Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities but no funds to the cooperative research program. This is not a grant program.

Dated: April 8, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–7592 Filed 4–14–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Public User ID Badging.

Form Number(s): PTO–2030, PTO–2224.

Agency Approval Number: 0651–0041.

Type of Request: Revision of a currently approved collection.

Burden: 1,260 hours annually.

Number of Respondents: 13,138 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to submit an application for an online access card (PTO–2030) and approximately 10 minutes (0.17 hours) to verify the information with the USPTO staff and be issued the card. The USPTO also estimates that it will take the public approximately 5 minutes (0.08 hours) to renew or replace an online access card, to submit an application for a security identification badge (PTO–2224), or to replace a security identification badge; and approximately 10 minutes (0.17 hours) to submit a user training application form. These estimates include the time to gather the necessary information, prepare the form, and submit the completed request.

Needs and Uses: The USPTO is required by 35 U.S.C. 41(i)(1) to maintain a Public Search Facility with patent and trademark collections available for searching and retrieval of information by the public. In order to manage the patent and trademark collections, the USPTO issues online access cards to customers who wish to use the search facilities and access their online systems. Under the authority provided in 41 CFR part 102–81, the USPTO is also upgrading the security procedures at its facilities and will issue a separate security identification badge with photograph for public search users. The public uses this collection to request an online access card, a security identification badge, or to register for training classes for the online search systems. The USPTO is adding three new forms to this information collection, one form for public users to apply for a security identification badge (PTO–2224) and two forms for public users to register for training classes.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- E-mail: *Susan.Brown@uspto.gov.* Include ''0651–0041 copy request'' in the subject line of the message.
- Fax: 571–273–0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before May 16, 2005 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: April 8, 2005.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 05–7560 Filed 4–14–05; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 16, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: April 11, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants Child Care Access Means Parents in School Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 400.
Burden Hours: 4,000.

Abstract: The Child Care Access Means Parents in School Program provides grants to institutions of higher education to enable them to provide child care to low-income students.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2727. 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 Joseph Schubart at his e-mail address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–7540 Filed 4–14–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 16, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: April 12, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Annual Performance Report for Title III and Title V Grantees.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 631.
Burden Hours: 12,700.

Abstract: Titles III and V of the Higher Education Act (HEA), provide discretionary and formula grant programs that make competitive awards to eligible Institutions of Higher Education and organizations (Title III, Part E) to assist these institutions expand their capacity to serve minority and low-income students. Grantees annually submit a yearly performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project. This request is to implement a new, web-based Annual Performance Report to more effectively elicit program-specific information to be used for program monitoring and Government Performance and Results Act (GPRA) reporting purposes. The Annual Performance Report will be the cornerstone of a new Performance Measurement System tailored to strengthen the Department of Education's program monitoring efforts, streamline our processes, and enhance our customer service.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2678. 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 Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–7557 Filed 4–14–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.372]

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Statewide Longitudinal Data Systems For Fiscal Year (FY) 2005

Summary: The Director of the Institute of Education Sciences (Institute) announces a competition for grants to support statewide longitudinal data systems. The Director takes this action under the Educational Technical Assistance Act of 2002 (Act), Title II of Pub. L. 107–279. The intent of these grants is to support the design, development, and implementation of statewide longitudinal data systems.

Supplementary Information:

Purpose of the Program: The purpose of the program is to provide financial assistance to State educational agencies (SEAs) for the development of longitudinal data systems to efficiently and accurately manage, analyze, disaggregate, and use individual student data, consistent with the Elementary and Secondary Education Act of 1965, as amended. These data systems will respond to the multiple information needs of key stakeholders, support State and local decision-making and facilitate needed research to improve student academic achievement and close achievement gaps.

Eligible Applicants: Eligible applicants are limited to SEAs.

Request for Applications and Other Information: Information regarding program and application requirements for this competition is contained in the Request for Applications package (RFA) that will be available on April 15, 2005 at the following Web site: *http://*

www.ed.gov/programs/edresearch/applicant.html Interested potential applicants should periodically check the Institute's Web site.

Information regarding selection criteria and review procedures will also be posted at this Web site.

Letter of Intent: A letter indicating a potential applicant's intent to submit an application is optional but encouraged. The letter of intent must be submitted electronically by May 13, 2005, using the instructions provided at the following Web site: *http://ies.constellagroup.com/.* Receipt of the letter of intent will be acknowledged by e-mail.

Applications Available: April 15, 2005.

Deadline for Transmittal of Applications: 8 p.m. eastern time, June 30, 2005.

Estimated Range of Awards: $1,000,000 to $6,000,000 for the entire project.

Project Period: Up to three years.

Fiscal Information: The number of awards made under this competition will depend upon the quality of the applications received. The size of the awards will depend upon the scope of the projects proposed. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 77, 80, 81, 82, 84, 85, 97, 98, and 99. In addition, 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217, 75.219, 75.220, 75.221, 75.222, and 75.230.

Performance Measures: To evaluate the overall success of this program, the Institute will determine at the end of each grant whether the SEA has in operation a statewide longitudinal data system. Grantees will be expected to report in annual and final reports on the status of their development and implementation of these systems.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications for this competition be submitted electronically to the following Web site: *http://ies.constellagroup.com.* Information on the software to be used in submitting applications will be available at the same Web site.

For Further Information Contact: Kashka Kubzdela, U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW., room 9067, Washington, DC 20006. Telephone: (202) 502–7411 or via Internet: *Kashka.Kubzdela@ed.gov.*

The date on which applications will be available, the deadline for transmittal of applications, the estimated range of awards, and the project period will also be listed in the RFA for this competition that will be posted at: *http://www.ed.gov/programs/edresearch/applicant.html.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed *in this section.* Individuals with disabilities may obtain a copy of the RFA in an alternative format by contacting that person.

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.*

Program Authority: 20 U.S.C. 9607.

Dated: April 12, 2005.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 05–7591 Filed 4–14–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement, Overview Information, Teaching American History Grant Program; Notice Inviting Applications For New Awards For Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215X.

Dates:

Applications Available: April 15, 2005.

Deadline for Notice of Intent to Apply: May 16, 2005.

Deadline for Transmittal of Applications: June 14, 2005.

Deadline for Intergovernmental Review: August 15, 2005.

Eligible Applicants: Local educational agencies (LEAs)—including charter schools that are considered LEAs under State law and regulations—working in partnership with one or more of the following entities:

- An institution of higher education.
- A non-profit history or humanities organization.
- A library or museum.

Estimated Available Funds: $117,000,000.

Maximum Awards: The following awards are from the notice of final selection criteria and other application requirements published elsewhere in this issue of the **Federal Register**. Total funding for a three-year project period is a maximum of: $500,000 for LEAs with enrollments of less than 20,000 students; $1,000,000 for LEAs with enrollments of 20,000–300,000 students; and $2,000,000 for LEAs with enrollments above 300,000 students. LEAs may form consortia and combine their enrollments in order to receive a grant reflective of their combined enrollment. For districts applying jointly as a consortium, the maximum award is based on the combined enrollment of the individual districts in the consortium. If more than one LEA wishes to form a consortium, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129 of the Education Department General Administrative Regulations.

Estimated Number of Awards: 100–135.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Teaching American History grants support projects to raise student achievement by improving teachers' knowledge, understanding, and appreciation of traditional American history. Grant awards assist local educational agencies (LEAs), in partnership with entities that have extensive content expertise, to develop, document, evaluate, and disseminate innovative, cohesive models of professional development. By helping teachers to develop a deeper understanding and appreciation of traditional American history as a separate subject within the core curriculum, these programs improve instruction and raise student achievement.

Priorities: This competition includes one absolute priority and one invitational priority. To be considered for funding, each applicant must address the absolute priority.

Absolute Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 2351(b) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110). For FY 2005, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Partnerships With Other Agencies or Institutions. Each applicant LEA must propose to work in collaboration with one or more of the following:

- An institution of higher education.
- A non-profit history or humanities organization.
- A library or museum.

Invitational Priority: For FY 2005 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Experimental and Quasi-Experimental Evaluation Designs. The Secretary establishes a priority for projects proposing an evaluation plan that is based on rigorous scientifically based research methods to assess the effectiveness of a particular intervention. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus, when feasible, the project must use an experimental design under which participants—e.g., students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—e.g. students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and participation in the intervention is determined by a specified cutting point on a quantified continuum of scores, regression discontinuity designs may be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

Definitions

As used in this invitational priority—

Scientifically based research (section 9101(37) of the ESEA as amended by NCLB 20 U.S.C. 7801(37)):

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Random assignment or experimental design means random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

Quasi experimental designs include several designs that attempt to approximate a random assignment design.

Carefully matched comparison groups design means a quasi-experimental design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome.

Regression discontinuity design means a quasi-experimental design that closely approximates an experimental design. In a regression discontinuity design, participants are assigned to a treatment or control group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Eligible students, teachers, classrooms, or schools above a certain score (''cut score'') are assigned to the treatment

group and those below the score are assigned to the control group. In the case of the scores of applicants' proposals for funding, the ''cut score'' is established at the point where the program funds available are exhausted.

Single subject design means a design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population.

Treatment reversal design means a single subject design in which a pre-treatment or baseline outcome measurement is compared with a post-treatment measure. Treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. For example, this design might be used to evaluate a behavior modification program for disabled students with behavior disorders.

Multiple baseline design means a single subject design to address concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Interrupted time series design means a quasi-experimental design in which the outcome of interest is measured multiple times before and after the treatment for program participants only.

Program Authority: 20 U.S.C. 6721.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99. (b) The notice of final selection criteria and other application requirements published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulation in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $117,000,000.

Maximum Awards: The following awards are from the notice of final selection criteria and other application requirements published elsewhere in this issue of the **Federal Register**. Total funding for a three-year project period is a maximum of: $500,000 for LEAs with enrollments of less than 20,000 students; $1,000,000 for LEAs with enrollments of 20,000–300,000 students; and $2,000,000 for LEAs with enrollments above 300,000 students. LEAs may form consortia and combine their enrollments in order to receive a grant reflective of their combined enrollment. For districts applying jointly as a consortium, the maximum award is based on the combined enrollment of the individual districts in the consortium. If more than one LEA wishes to form a consortium, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129 of the Education Department General Administrative Regulations.

Estimated Number of Awards: 100—135.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs—including charter schools that are considered LEAs under State law and regulations—working in partnership with one or more of the following entities:

- An institution of higher education.
- A non-profit history or humanities organization.
- A library or museum.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.215X.

You may also obtain the application package for the program via the Internet at the following address: *http://www.ed.gov/programs/teachinghistory/applicant.html.*

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 one of the program contact persons listed in section VII of this notice.

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.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of LEAs that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department with a short e-mail indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Secretary requests that this e-mail notification be sent no later than May 16, 2005, to Alex Stein at: *TeachingAmericanHistory@ed.gov.*

Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit for Application Narrative: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative to the equivalent of no more than 25 single-sided, double spaced pages printed in 12-point font or larger. If the applicant is addressing the invitational priority for evaluation, the narrative should be limited to 30 single-sided, double-spaced pages printed in 12-point font or larger.

The page limit does not apply to the title page, the Application for Federal Assistance (ED 424), the one-page abstract, the budget summary form (ED 524) and the narrative budget justification, any curriculum vitae, the bibliography of literature cited, or the assurances and certifications.

3. *Submission Dates and Times:*

Applications Available: April 15, 2005.

Deadline for Notice of Intent to Apply: May 16, 2005.

Deadline for Transmittal of Applications: June 14, 2005.

Applications for grants under this competition 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.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 15, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program 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 Teaching American History Grant Program-CFDA Number 84.215X must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- 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 are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you 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 Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of 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 electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the 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: Alex Stein, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W218, Washington, DC 20202–4260. FAX: (202) 401–8466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215X), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.215X), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215X), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The following selection criteria for this program are from the notice of final selection criteria and other application requirements published elsewhere in this issue of the **Federal Register**.

(1) *Project Quality* (60 points). The Secretary considers the quality of the proposed project by considering—

(a) The likelihood that the proposed project will develop, implement, and strengthen programs to teach traditional American history as a separate academic subject (not as a component of social studies) within elementary school and secondary school curricula.

(b) How specific traditional American history content will be covered by the grant (including the significant issues, episodes, and turning points in the history of the United States; how the words and deeds of individuals have determined the course of our Nation; and how the principles of freedom and democracy articulated in the founding documents of this Nation have shaped America's struggles and achievements and its social, political, and legal institutions and relations); the format in which the project will deliver the history content; and the quality of the staff and consultants responsible for delivering these content-based professional development activities, emphasizing, where relevant, their postsecondary teaching experience and scholarship in subject areas relevant to the teaching of traditional American history. The applicant may also attach curriculum vitae for individuals who will provide the content training to the teachers.

(c) How well the applicant describes a plan that meets the statutory requirement to carry out activities under the grant in partnership with one or more of the following:

(i) An institution of higher education.

(ii) A nonprofit history or humanities organization.

(iii) A library or museum.

(d) The applicant's rationale for selecting the partner(s) and its description of specific activities that the partner(s) will contribute to the grant during each year of the project. The applicant should include a memorandum of understanding or detailed letters of commitment from the partner(s) in an appendix to the application narrative.

(2) *Significance* (15 points). The Secretary considers the significance of the proposed project. In determining the significance of the project, the Secretary considers—

(a) The extent to which the proposed project is likely to build local capacity to improve or expand the LEA's ability to provide American history teachers professional development in traditional American history subject content and content-related teaching strategies.

(b) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(c) How teachers will use the knowledge acquired from project activities to improve the quality of instruction. This description may include plans for reviewing how teachers' lesson planning and classroom teaching are affected by their participation in project activities.

Note: In meeting this criterion, the Secretary encourages the applicant to include a description of its commitment to build local capacity by primarily serving teachers in its LEA or consortium of LEAs. The Secretary also encourages the applicant to include background and statistical information to explain the project's significance. For example, the applicant could include information on: The extent to which teachers in the LEA are not certified in history or social studies; student achievement data in American history; and rates of student participation in courses such as Advanced Placement U.S. History.

(3) *Quality of the management plan* (10 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(4) *Quality of the project evaluation* (15 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) How well the evaluation plans are aligned with the project design explained under the *Project Quality* criterion.

(c) Whether the evaluation includes benchmarks to monitor progress toward specific project objectives, and outcome measures to assess the impact on teaching and learning or other important outcomes for project participants.

(d) Whether the applicant identifies the individual and/or organization that has agreed to serve as evaluator for the project and includes a description of the qualifications of that evaluator.

(e) The extent to which the applicant indicates the following:

(i) What types of data will be collected;

(ii) When various types of data will be collected;

(iii) What methods will be used to collect data;

(iv) What data collection instruments will be developed;

(v) How the data will be analyzed;

(vi) When reports of results and outcomes will be available;

(vii) How the applicant will use the information collected through the evaluation to monitor the progress of the funded project and to provide accountability information about both success at the initial site and effective strategies for replication in other settings; and

(viii) How the applicant will devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

Budgets should include funds for at least two project staff members to attend a two-day annual meeting of the Teaching American History Grant program in Washington, DC, each year of the project. Applicants also should include in their budgets funds to cover the travel and lodging expenses for these training activities during each year of the project.

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. For specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* We have established one performance measure for Teaching American History. The indicator is: Students in experimental and quasi-experimental studies of educational effectiveness of Teaching American History projects will demonstrate higher achievement on course content measures and/or statewide U.S. history assessments than students in control and comparison groups.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Emily Fitzpatrick, Alex Stein, Harry Kessler, Neil Danberg, or Margarita Melendez, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W218, Washington, DC 20202–6200. Telephone: (202) 260–1498 (Emily Fitzpatrick); or (202) 205–9085 (Alex Stein); or (202) 708–9943 (Harry Kessler); or (202) 205–3385 (Neil Danberg); or (202) 260–3548 (Margarita Melendez) or by e-mail: *teachingamericanhistory@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the program contact persons 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: April 12, 2005.

Michael J. Petrilli,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 05–7597 Filed 4–14–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Teaching American History

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of final selection criteria and other application requirements.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement announces selection criteria and other application requirements for the Teaching American History program. We may use these selection criteria and other application requirements for competitions in fiscal

year (FY) 2005 and later years. We take this action to provide more specificity with regard to the range of awards and the number of awards a local educational agency (LEA) may receive in each competition. We intend these selection criteria and other application requirements to provide a description of the goals and objectives of the Teaching American History program so that applicants will describe clear and specific means by which they will achieve those goals and objectives.

DATES: *Effective Date:* These selection criteria and other application requirements are effective May 16, 2005.

FOR FURTHER INFORMATION CONTACT: Alex Stein, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W218, Washington, DC 20202–5910. Telephone: (202) 205–9085 or via Internet: *Alex.Stein@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The Teaching American History (TAH) program is authorized by Title II, Part C, Subpart 4 of the Elementary and Secondary Education Act of 1965, as reauthorized by the No Child Left Behind Act of 2001 (ESEA). TAH grants support projects to raise student achievement by improving teachers' knowledge, understanding, and appreciation of traditional American history. This notice is intended to ensure that the TAH program is using the highest-quality selection criteria, so that the program in turn receives the highest-quality grant applications.

We published a notice of proposed selection criteria and other application requirements for this program in the **Federal Register** on January 14, 2005 (70 FR 2625). The notice of proposed selection criteria and other application requirements included a discussion of the significant issues and analysis used in the determination of the selection criteria and other application requirements. (See pages 2625 through 2626 of that notice).

No significant changes were made to these final selection criteria and other application requirements, but we have added language to provide better clarity and facilitate better understanding of the intent of the selection criteria.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed selection criteria and other application requirements, 10 parties submitted comments. An analysis of the comments we received and our responses follows.

We discuss substantive issues under the title of the selection criteria and other application requirements to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes that we are not authorized to make under the applicable statutory authority. Please note, however, that we did make a minor change to the *Funding* section in which we eliminated minimum funding levels for each LEA category and changed the name of that section to *Maximum Awards.*

A. Proposed Selection Criteria

Comment: One commenter praised the Department, stating that the proposed selection criteria made clearer what the Department considered important in a grant proposal and that the criteria would be a good improvement over the application notices issued in past years.

Discussion: We agree with this comment.

Change: None.

Comment: One commenter suggested that the Department delete the language from criterion (1) *Project Quality,* paragraph (a), ''including the implementation of activities,'' and paragraphs (i) and (ii), stating that the addition of this language focuses reviewer attention on instruction and away from carefully examining history content.

Discussion: We agree that an emphasis on history content is primary to the TAH program and that the language cited by the commenter might distract reviewers from carefully examining history content.

Change: We have deleted the language and paragraphs cited by the commenter.

Comment: One commenter suggested that the Department move paragraph 1(c) under selection criterion, *Project Quality*, to the selection criterion, *Significance*.

Discussion: We agree that this paragraph should be placed under the *Significance* criterion because it emphasizes teaching strategies.

Change: We have moved this paragraph from the *Project Quality* criterion to the *Significance* criterion.

Comment: Three commenters recommended that one sentence in paragraph 1(b) under the *Project Quality* criterion, which relates to the ways in which American history will be covered by the grant, be changed to emphasize TAH's goal of implementing high-quality American history scholarship. Specifically, the comments suggested that we change the sentence to read as follows: ''How specific traditional American history content will be covered by the grant (including the significant issues, episodes, and turning points in the history of the United States; how the words and deeds of individual Americans have determined the course of our Nation; and how the principles of freedom and democracy articulated in the founding documents of this Nation have shaped America's struggles and achievements and its social, political, and legal institutions and relations); the format in which the project will deliver the history content; and the quality of the staff and consultants responsible for delivering these content-based professional development activities, emphasizing, where relevant, their postsecondary teaching experience and scholarship in subject areas relevant to the teaching of traditional American history.''

Discussion: We agree that the addition of a phrase about emphasizing experience and scholarship in traditional American history is important. We also believe that the sentence with the addition of the suggested phrase expresses a realistic and powerful view of traditional American history.

Change: We have added a phrase to paragraph 1(b) in the *Project Quality* criterion that emphasizes that those who provide professional development to participating teachers in the TAH program should possess experience and scholarship relevant to American History.

Comment: One commenter suggested that the Department delete the phrase ''and locally implement services'' from criterion (2), *Significance*. This suggestion is based on the commenter's view that it is not necessary that all services be delivered locally, given that summer institutes and other professional development services may be held some distance from the schools in which teachers work.

Discussion: We agree that all services need not be delivered locally and that high-quality professional development can be delivered at some distance from schools and school districts.

Change: We have deleted the phrase from the selection criterion.

B. Proposed Application Requirements

Comment: Three commenters suggested that the Department provide information on whether school district

consortia may be formed to apply for grant funds, so that an applicant may be eligible for a larger award.

Discussion: We agree with the need to provide clarification of this issue.

Change: We have revised the language on funding by adding a sentence to the *Maximum Awards* section indicating that schools may form consortia when applying.

Comment: Five commenters suggested that the Department delete the funding provision that limits school districts with student enrollment under 20,000 to a grant of $500,000.

Discussion: With the change to allow school districts to form consortia and to pool their enrollments, there should be no obstacle to small districts joining together to apply for this grant as consortium members in order to receive a larger grant. For districts with a student enrollment of less than 20,000 students that choose to apply for the grant on their own, a three-year grant of $500,000 should be adequate for addressing the professional development needs of their U.S. history teachers, and would be proportionate to the number of teachers likely to be served.

Change: None.

Note: This notice does not solicit applications. In any year in which we choose to use these selection criteria and other application requirements, we invite applications through a notice in the **Federal Register**.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications under this program. The maximum score for all of these criteria is 100 points. In any given year, we will announce the maximum possible score for each criterion, either in the application notice published in the **Federal Register** or in the application package.

(1) *Project quality.* The Secretary considers the quality of the proposed project by considering—

(a) The likelihood that the proposed project will develop, implement, and strengthen programs to teach traditional American history as a separate academic subject (not as a component of social studies) within elementary school and secondary school curricula.

(b) How specific traditional American history content will be covered by the grant (including the significant issues, episodes, and turning points in the history of the United States; how the words and deeds of individual Americans have determined the course of our Nation; and how the principles of freedom and democracy articulated in the founding documents of this Nation have shaped America's struggles and achievements and its social, political, and legal institutions and relations); the format in which the project will deliver the history content; and the quality of the staff and consultants responsible for delivering these content-based professional development activities, emphasizing, where relevant, their postsecondary teaching experience and scholarship in subject areas relevant to the teaching of traditional American history. The applicant may also attach curriculum vitae for individuals who will provide the content training to the teachers.

(c) How well the applicant describes a plan that meets the statutory requirement to carry out activities under the grant in partnership with one or more of the following:

(i) An institution of higher education.

(ii) A nonprofit history or humanities organization.

(iii) A library or museum.

(d) The applicant's rationale for selecting the partner(s) and its description of specific activities that the partner(s) will contribute to the grant during each year of the project. The applicant should include a memorandum of understanding or detailed letters of commitment from the partner(s) in an appendix to the application narrative.

(2) *Significance.* The Secretary considers the significance of the proposed project. In determining the significance of the project, the Secretary considers—

(a) The extent to which the proposed project is likely to build local capacity to improve or expand the LEA's ability to provide American history teachers professional development in traditional American history subject content and content-related teaching strategies.

(b) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(c) How teachers will use the knowledge acquired from project activities to improve the quality of instruction. This description may include plans for reviewing how teachers' lesson planning and classroom teaching are affected by their participation in project activities.

Note: In meeting this criterion, the Secretary encourages the applicant to include a description of its commitment to build local capacity by primarily serving teachers in its LEA or consortium of LEAs. The Secretary also encourages the applicant to include background and statistical information to explain the project's significance. For example, the applicant could include information on: the extent to which teachers in the LEA are not certified in history or social studies; student achievement data in American history; and rates of student participation in courses such as Advanced Placement U.S. History.

(3) *Quality of the management plan.* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(4) *Quality of the project evaluation.* The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) How well the evaluation plans are aligned with the project design explained under the *Project Quality* criterion.

(c) Whether the evaluation includes benchmarks to monitor progress toward specific project objectives, and outcome measures to assess the impact on teaching and learning or other important outcomes for project participants.

(d) Whether the applicant identifies the individual and/or organization that has agreed to serve as evaluator for the project and includes a description of the qualifications of that evaluator.

(e) The extent to which the applicant indicates the following:

(i) What types of data will be collected;

(ii) When various types of data will be collected;

(iii) What methods will be used to collect data;

(iv) What data collection instruments will be developed;

(v) How the data will be analyzed;

(vi) When reports of results and outcomes will be available;

(vii) How the applicant will use the information collected through the

evaluation to monitor the progress of the funded project and to provide accountability information about both success at the initial site and effective strategies for replication in other settings; and

(viii) How the applicant will devote an appropriate level of resources to project evaluation.

Maximum Awards

(1) Total funding for a three-year project period is a maximum of: $500,000 for LEAs with enrollments of less than 20,000 students; $1,000,000 for LEAs with enrollments of 20,000–300,000 students; and $2,000,000 for LEAs with enrollments above 300,000 students. LEAs may form consortia and combine their enrollments in order to receive a grant reflective of their combined enrollment. For districts applying jointly as a consortium, the maximum award is based on the combined enrollment of the individual districts in the consortium. If more than one LEA wishes to form a consortium, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129 of the Education Department General Administrative Regulations.

(2) A maximum of one grant will be awarded per applicant per competition.

Executive Order 12866

This notice of final selection criteria and other application requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final selection criteria and other application requirements are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final selection criteria and other application requirements, we have determined that the benefits of the final selection criteria and other application requirements justify the costs.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We fully discussed the costs and benefits in the notice of proposed selection criteria and other application requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.215X Teaching American History Program)

Program Authority: 20 U.S.C. 6721–6722.

Dated: April 12, 2005.

Michael J. Petrilli,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 05–7598 Filed 4–14–05; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting for U.S. Election Assistance Commission Board of Advisors.

DATE AND TIME: Tuesday, April 26, 2005, 6:30 p.m.–8:30 p.m., Wednesday, April 27, 2005, 8:30 a.m.–4:30 p.m. and Thursday, April 28, 2005, 8:30 a.m.–Noon.

PLACE: Boston Marriott Cambridge, 2 Cambridge Center, (Broadway & 3rd Street), Cambridge, MA 02142. (Massachusetts Bay Transit Station Stop: Kendall Square).

PURPOSE: The U.S. Election Assistance Commission (EAC) Board of Advisors, as required by the Help American Vote Act of 2002, will meet to present its views on issues in the administration of Federal elections, and formulate recommendations to the EAC.

The Board will receive an update on recent EAC activities. It will also discuss Voluntary Voting System Guidelines, EAC proposed Voluntary Guidance on the Implementation of statewide Voter Registration Lists, overseas voting issues, EAC's research agenda and other relevant matters pertaining to the administration of Federal elections. Further, the Board of Advisors will hear reports from its various subcommittees. Additionally, the Board will take administrative actions necessary for its efficient operation, including the election of its officers and adoption of bylaws.

Any member of the public may file a written statement with the Board before, during, or after the meeting. To the extent that time permits, the Board may allow public presentation or oral statements at the meeting.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, telephone: (202) 566–3100.

Gracia M. Hillman,

Chair, U.S. Election Assistance Commission.

[FR Doc. 05–7712 Filed 4–13–05; 12:44 pm]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–70–011]

Algonquin Gas Transmission, LLC; Notice of Negotiated Rate

April 7, 2005.

Take notice that on March 28, 2005, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as a part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A, to become effective April 1, 2005.

Algonquin states that the purpose of this filing is to implement the negotiated rate transaction for transportation service to be rendered to Northeast Energy Associates, A Limited Partnership.

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. E5–1764 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–141]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate

April 7, 2005.

Take notice that on April 1, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective April 1, 2005:

First Revised Sheet No. 851,
First Revised Sheet No. 852,
First Revised Sheet No. 853.

CEGT states that the purpose of this filing is to reflect the termination of negotiated rates with respect to a transaction.

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.

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Magalie R. Salas,

Secretary.

[FR Doc. E5–1762 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–261–000]

CenterPoint Energy Gas Transmission Company; Notice of Revenue Crediting Filing

April 7, 2005.

Take notice that on April 1, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing its annual revenue crediting filing pursuant to its FERC Gas Tariff, Sixth Revised Volume No. 1, section 5.7(c)(ii)(2)B (Imbalance Cash Out), section 23.2(b)(iv) (IT, SBS and PHS Revenue Crediting) and section 23.5 (IT Revenue Credit). CEGT states that this filing addresses the period from February 1, 2004 through January 31, 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 on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on April 15, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1771 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–11–000]

The Cincinnati Gas & Electric Company; Notice of Rate Election

April 7, 2005.

Take notice that on March 1, 2005, the Cincinnati Gas & Electric Company (Cincinnati), filed a new rate election pursuant to section 284.123(b)(1)(ii) of the Commission's Regulations (18 CFR 284.123). Cincinnati proposes an effective date of March 1, 2005.

Cincinnati proposes to utilize a cost-based rate that has been approved by the Public Utilities Commission of Ohio, in this instance Cincinnati's currently effective Rate IT, for comparable interruptible transportation service.

Any person desiring to participate in this rate proceeding 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.

Comment Date: 5 p.m. eastern time on April 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1763 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP05–267–000, RP97–406–033, RP00–15–005, RP00–344–004, RP00–632–014]

Dominion Transmission, Inc.; Notice of Offer of Settlement

April 7, 2005.

Take notice that on April 1, 2005, Dominion Transmission, Inc. (DTI) filed a Stipulation and Agreement (Settlement), including *pro forma* tariff sheets, pursuant to 18 CFR 385.602 (2004) to reduce its rates for transportation service and the fuel retention level for its storage services and establish a five-year moratorium on further transportation and storage rate changes.

DTI states that the Settlement is designed as a limited settlement to existing Commission-approved settlements of DTI proceedings, with the Settlement Amendment leaving in place the settled resolution of a series of issues on the DTI system. DTI asserts that the Settlement preserves the benefit of previously settled issues while providing rate relief to the settling parties, ensuring rate certainty for all, and avoiding the cost and risks of potential litigation. DTI states that the base transportation rate reduction when combined with the storage fuel retention reduction will result in annual rate relief reflected in the Settlement of approximately $49 million.

DTI states that it has served copies of this filing on all parties in Docket Nos. RP97–406, RP00–15, RP00–344, and RP00–632, as well as on any of its customers identified as not included on those service lists.

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 (2004)) by the date set forth below. 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 or motions must be filed on or before the dates as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date set below need not serve motions to intervene or protests on persons other than the Applicant. Pursuant to Rule 602(f)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.602(f)(2) (2004), initial comments on the Settlement are due not later than 20 days after the filing of the Settlement, and reply comments are due not later than 30 days after the filing of the Settlement.

The Commission encourages electronic submission interventions and comments 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 comment 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.

Interventions, Protests and Initial Comments are due by: April 21, 2005.

Reply Comments are due by: May 2, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1775 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–353–002 and CP03–355–002]

Eastern American Energy Corporation; Notice of Filing

April 7, 2005.

Take notice that on February 28, 2005, Eastern American Energy Corporation (Eastern) filed a work sheet in support of Eastern's initial rate filing as a special rate schedule under section 154.112(a) of the Commission's regulations.

Eastern states that the filing is intended to comply with the filing requirement of Ordering Paragraph (F) in the Commission's March 25, 2004 Order in Docket Nos. CP03–353–000 and CP03–355–000, 106 FERC ¶ 61,297.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on April 15, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1776 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–110–005]

El Paso Natural Gas Company; Notice of Compliance Filing

April 7, 2005.

Take notice that on March 30, 2005, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Substitute Third Revised Sheet No. 287A, with an effective date of March 1, 2005.

El Paso states that Substitute Third Revised Sheet No. 287A to its FERC Gas Tariff, Second Revised Volume No. 1–A, is being revised to comply with the Commission's Order issued on February 23, 2005, addressing a pagination issue involving the procedures for re-designating primary point rights.

El Paso states that copies of its filing have been sent to all parties of record 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. E5–1767 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–265–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

April 7, 2005.

Take notice that on April 1, 2005, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2005:

Tenth Revised Sheet No. 3,
Eighth Revised Sheet No. 3A,
Ninth Revised Sheet No. 3B,
Eighth Revised Sheet No. 3C.

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to section 154.106(c) of the Commission's regulations.

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. E5–1774 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–047]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

April 7, 2005.

Take notice that on March 30, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8.01n, reflecting an effective date of March 31, 2005. Gulfstream explains that this filing is being made in connection with a negotiated rate transaction pursuant to section 31 of the general terms and conditions of Gulfstream's FERC Gas Tariff.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state 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. E5–1766 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–260–000]

Horizon Pipeline Company, L.L.C.; Notice of Refund Report

April 7, 2005.

Take notice that on April 1, 2005, Horizon Pipeline Company, L.L.C. (Horizon) filed its Refund Report regarding the penalty revenues for the period December 1, 2003, through December 31, 2004, that it refunded to its customers pursuant to section 10.7 of the general terms and conditions (GT&C) of its FERC Gas Tariff, Original Volume No. 1.

Horizon states that copies of the filing are being mailed to its customers and interested state 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 on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on April 15, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1770 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1053–014]

Maine Public Service Company; Notice of Filing

April 8, 2005.

On March 10, 2005, Maine Public Service Company, Houlton Water Company, Eastern Maine Electric cooperative, van Buren Light and Power district, and WPS Energy Services, Inc. filed a joint amended 2004 Informational Filing, in the above-docketed proceeding.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on April 15, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1778 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–259–000]

Mississippi Canyon Gas Pipeline, LLC; Notice of Tariff Filing

April 7, 2005.

Take notice that on April 1, 2005, Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 312A, to become effective May 1, 2005.

MCGP states that the above-referenced tariff sheet is being filed in accordance with section 154.204 of the Commission's regulations in order to make minor conformation changes to its tariff to reflect additions to the Tariff's Interactive Internet Web Site Agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1769 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–146–001]

Northern Border Pipeline Company; Notice of Compliance Filing

April 7, 2005.

Take notice that on March 30, 2005, Northern Border Pipeline Company (Northern) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 260E, to become effective on April 29, 2005.

Northern states that this filing is made to comply with the Commission's Order issued on March 2, 2005, in Docket No. RP05–146–000, (110 FERC ¶ 61,203).

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. E5–1768 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–263–000]

Overthrust Pipeline Company; Notice of Proposed Changes in Ferc Gas Tariff

April 7, 2005.

Take notice that on April 1, 2005, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to become effective May 1, 2005:

Thirteenth Revised Sheet No. 1
Sixteenth Revised Sheet No. 30
Third Revised Sheet No. 78I
First Revised Sheet No. 78I.01

Overthrust states it is proposing to remove tariff provisions implementing the Commission's CIG/Granite State policy concerning a shipper's retention of its discounted rates when a secondary point is used.

Overthrust states that copies of the filing have been served upon Overthrust's customers and the public service commissions of Utah and Wyoming.

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. E5–1773 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–680–000]

Premcor Power Marketing LLC; Notice of Issuance of Order

April 8, 2005.

Premcor Power Marketing LLC (Premcor) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity, energy, and ancillary services at market-based rates. Premcor also requested waiver of various Commission regulations. In particular, Premcor requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Premcor.

On April 5, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Premcor 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 May 5, 2005.

Absent a request to be heard in opposition by the deadline above, Premcor 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 Premcor, 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 Premcor's issuances of securities or assumptions of liability.

Copies of the full text of the Director'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. E5–1777 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–262–000]

Questar Pipeline Company; Notice of Tariff Filing

April 7, 2005.

Take notice that on April 1, 2005, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Sheet No. 99, with an effective date of May 1, 2005.

Questar states that it is proposing to remove discounting provisions that implemented the Commission's CIG/Granite State policy concerning a shipper's retention of its discounted rates when a secondary point is used.

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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. E5–1772 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–205–005]

Southern Natural Gas Company; Notice of Negotiated Rate Tariff Filing

April 7, 2005.

Take notice that on April 1, 2005, Southern Natural Gas Company (Southern) tendered for filing its Negotiated Rate Tariff Filing to adopt during an interim period the settlement rates proposed as part of its rate settlement in Docket No. RP04–523 for certain customers that have elected to be consenting parties to the rate settlement.

Southern requests that the Commission grant such approval of the tariff sheets effective March 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. E5–1765 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–92–000]

Gregory Swecker v. Midland Power Cooperative; Notice of Petition To Enforce PURPA

April 11, 2005.

On April 6, 2005, Gregory Swecker filed a petition to enforce the Public Utilities Regulatory Policies Act of 1978 (PURPA) against Midland Power Cooperative.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protest must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on April 27, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1781 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–100–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

April 8, 2005.

Take notice that on March 31, 2005, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77022, filed in Docket No. CP05–100–000, an application pursuant to pursuant to sections 157.205, 157.208 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for authorization to abandon certain pipeline supply lateral facilities, and to construct and operate certain other pipeline supply lateral facilities and to increase the maximum allowable operating pressure of its 526C–100 Line, all located in Louisiana and offshore Louisiana. Tennessee states that the purpose of this application is to gain access to gas supplies from the ultra-deep Eastern Gulf of Mexico, under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any questions concerning this application may be directed to David E. Maranville, Senior Counsel, at (713)420–6900 (phone) or (713)420–1601(fax).

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1780 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting

April 8, 2005.

In the matter of: ER00–2268–003, ER00–2268–005, ER00–2268–006, ER00–2268–007, ER00–2268–010, EL05–10–000, ER99–4124–001, ER99–4124–003, ER99–4124–004, ER99–4124–005, ER99–4124–008, EL05–11–000, ER00–3312–002, ER00–3312–004, ER00–3312–005, ER00–3312–006, ER00–3312–009, EL05–12–000, ER99–4122–004, ER99–4122–006, ER99–4122–007, ER99–4122–008, ER99–4122–011, EL05–13–000 and EC05–20–000; Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation, APS Energy Services Company, Inc., PPL Sundance Energy, LLC, PPL EnergyPlus, LLC, Arizona Public Service Company.

Take notice that a meeting will be held on Thursday, April 14, 2005, at 10 a.m. (e.d.t.), in a room to be designated at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, to discuss the revised compliance filings made in the above referenced proceedings, as well as matters related to the Commission staff's data request issued on April 5, 2005 in these proceedings.

Participation in this meeting will be limited to interested parties who have requested and been granted access to critical energy infrastructure information (CEII) in accordance with 18 CFR 388.113(d). The CEII request form may be found at *http://www.ferc.gov/help/how-to/ceii-req-form.doc.* All CEII requests must be received no later than 5 p.m. (e.d.t.) on April 12, 2005. Requesters will be required to sign a non-disclosure agreement prior to obtaining access to CEII. Representatives of the Pinnacle West Companies will be granted access in accordance with 18 CFR 388.113(d)(1) without having to file a formal CEII request or non-disclosure agreement.

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 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information regarding the meeting, please contact Thomas Brownfield at *Thomas.Brownfield@ferc.gov* no later than 5 p.m. (e.d.t.) Tuesday, April 12, 2005, for further information on participating in the meeting.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1779 Filed 4–14–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2005–2002; FRL–7998–8]

Office of Environmental Information; Announcement of Environmental Data Standards Council Revised Data Standards

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability.

SUMMARY: Notice of availability is hereby given for six revised data standards—Biological Taxonomy, Contact Information, Facility Site Identification, Permitting Information, Tribal Identifier and SIC/NAICS. The Biological Taxonomy Data Standard identifies specific data elements necessary for consistent and unambiguous identification of biological organisms of environmental interest. The Contact Information Data Standard describes a point of contact, address and communication information. The Facility Site Identification Data Standard provides for the unique identification of facilities of environmental interest. The Permitting Information Data Standard incorporates the original permitting standard and extends the scope to include information germane to multiple permitting programs. The Tribal Identifier Data Standard adopts the Bureau of Land Management tribal names and codes necessary to identify federally recognized American Indian and Alaska Native entities. The SIC/NAICS Data Standard provides information on business activities through reference to the Standard Industrial Classification (SIC) and the

North American Industrial Classification System (NAICS).

FOR FURTHER INFORMATION CONTACT: Linda Spencer; Environmental Protection Agency; 1200 Pennsylvania Avenue, MC 2822T; Washington, DC 20460; phone: 202 566 1651; fax: 202 566 1624; e-mail: *Spencer.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: The standards are comprised of data elements, formats, and definitions. Each standard document provides an overview diagram that depicts the organization of the standard.

• Key changes to the standards include:

• Identifiers and Code Lists are paired with context data elements.

• Contact Information Data Standard—becomes the primary standard for all contact related information and is referenced in other data standards.

• Facility Site Identification Data Standard—is restructured to reference rather than replicate appropriate primary standards (*e.g.*, contact information) and to include the Federal Facility Data Standard information.

• Federal Facility Data Standard—is incorporated entirely into the Facility Site Identification Data Standard and is no longer its own standard.

These standards were developed and revised by the Environmental Data Standards Council (EDSC). The EDSC is a partnership of among EPA, States, Tribes which promotes the efficient sharing of environmental information through the cooperative development of data standards. The EDSC conducted a technical review of the revised standards by U.S. EPA staff and the States in the Fall 2004. These documents reflect changes based on the comments received during the review.

The standards are intended for use in environmental data exchanges among States, Tribal entities and the U.S. EPA. They are not meant to dictate or to limit data an agency chooses to collect for its own internal purposes. Changes in data standards should not be interpreted to mean that revisions to databases or information systems are required. What they do mean is that formats for sharing data with Exchange Network (EN) partners will change because the Exchange Network has adopted Shared Schema Components based on the data standards. The SSCs are available on the Exchange Network Web site at *http://www.exchangenetwork.net.*

The draft data standards and ''Frequently Asked Questions'' document can be found on EDSC's Web site *http://www.envdatastandards.net/* and are available through the Docket system as indicated below.

I. General Information

A. How Can I Get Copies of These Documents and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OEI–2005–0002. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the OEI Docket is (202) 566–1752.

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 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. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Dated: April 8, 2005.

Oscar Morales,

Director, Collection Strategies Division, Office of Environmental Information, Office of Information Collection.

[FR Doc. 05–7576 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6662–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed April 4, 2005 Through April 8, 2005

Pursuant to 40 CFR 1506.9.

EIS No. 20050145, FINAL EIS, FHW, MO, I–64/US 40 Corridor, Reconstruction of the existing I–64/US 40 Facility with New Interchange Configurations and Roadway, Funding, City of St. Louis, St. Louis County, MO, Wait Period Ends: May 20, 2005, Contact: Don Neumann (573) 636–7104.

EIS No. 20050146, FINAL EIS, NPS, AR, MS, LA, TN, KY Vicksburg Campaign Trail (VCT) Feasibility Study, To Examine and Evaluate a Number of Sites, Implementation, Mississippi River, AR, LA, TN, MS and KY, Wait Period Ends: May 16, 2005, Contact: Richard Sussman (404) 562–3124.

EIS No. 20050147, FINAL EIS, AFS, ID, American and Crooked Rivers Project, Improve Forest Health and Reduce Hazardous Fuels, Implementation, Nez Perce National Forest, Red River Ranger District, Idaho County, ID, Wait Period Ends: May 16, 2005, Contact: Ester McCullough (208) 983–0885.

EIS No. 20050148, FINAL EIS, FHW, ID, Fernan Lake Safety Improvement Project, Proposal to Reconstruct or Resurface 17.2 km (10.7 mi) Idaho Forest Highway 80 (ID PFH 80) commonly known as Fernan Lake Road, Right-of-Way Permit, Idaho Panhandle National Forests, Coeur d' Alene River Ranger District, Kootenai County, ID, Wait Period Ends: May 16, 2005, Contact: Sajid Aftab (360) 619–7895.

EIS No. 20050149, DRAFT EIS, FHW, WI, U.S. 41 Highway Corridor Project, Transportation Improvement between the Cities of Oconto and Peshtigo, Funding, Marinette and Oconto Counties, WI, Comment Period Ends: June 6, 2005, Contact: Johnny Gerbitz (608) 829–7511.

EIS No. 20050150, FINAL EIS, NAS, Programmatic EIS—Mars Exploration Program (MEP) Implementation, Wait Period Ends: May 16, 2005, Contact: Mark R. Dahl (202) 358–4800.

EIS No. 20050151, DRAFT EIS, AFS, CA, Ansel Adams and John Muir Wildernesses, Trail and Commercial Pack Sock Management, Implementation, Inyo, Mono, Madera and Fresno Counties, CA, Comment Period Ends: June 15, 2005, Contact: MaryBeth Hennessy (760) 873–2448.

Amended Notices

EIS No. 20050086, DRAFT EIS, AFS, WY, Dean Project Area, Proposes to Implement Multiple Resource Management Actions, Black Hills National Forest, Bearlodge Ranger

District, Sundance, Crook County, WA, Comment Period Ends: May 2, 2005, Contact: Steve Kozel (307) 283–1361.

Revision of **Federal Register** Notice Published on 3/11/2005: CEQ Comment Period Ending on 4/25/2005 has been Extended to 5/2/2005.

EIS No. 20050104, DRAFT EIS, NPS, CA, Golden Gate National Recreation Area (GGNRA) Fire Management Plan, Implementation, Muir Woods National Monument, Fort Point National Historic Site, San Mateo, San Francisco and Marin Counties, CA, Comment Period Ends: May 27, 2005, Contact: Alex Naar (415) 331–6374.

Revision of **Federal Register** Notice Published on 03/18/2005: Correction to Agency from AFS to NPS also, correction to Comment Period from 05/17/05 to 5/27/2005.

EIS No. 20050140, FINAL EIS, FHW, NV, Boulder City/US 93 Corridor Transportation Improvements, Study Limits are between a western boundary on US 95 in the City of Henderson and an eastern boundary on U.S. 93 west of downtown Boulder City, NPDES and U.S. Army COE Section 404 Permits Issuance and Right-of Way Grant, Clark County, NV, Wait Period Ends: May 13, 2005, Contact: Ted P. Bendure (775) 687–5322.

Revision of **Federal Register** Notice Published on 04/08/05: CEQ Comment Period Ending 05/09/2005 has been extended to 05/13/2005.

Dated: April 12, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–7570 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6662–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20040549, ERP No. D–FHW–D40326–MD, Intercounty Connector (ICC) from I–270 to US–1, Funding and U.S. Army COE Section 404 Permit, Montgomery and Prince George's Counties, MD.

Summary: EPA expressed environmental objections with the Corridor 1 alternative, due to impacts to wetlands and stream habitat in forested parkland. EPA expressed environmental concerns with the Corridor 2 Alternative due to potential impacts from secondary development, natural resource and community impacts and potential impact to a nearby reservoir. Rating EO2.

EIS No. 20040600, ERP No. D–FHW–D40327–PA, Southern Beltway Transportation Project, Improvement from US–22 in Robinson Township to Interstate 79 in South Fayette Township and Cecil Township, Funding and U.S. Army COE Section 404 Permit, Washington and Allegheny Counties, PA.

Summary: EPA expressed environmental concerns due to potential impacts to surface water, wetlands, forested habitat, threatened and endangered species, and possible environmental justice areas. Rating EC2.

EIS No. 20050012, ERP No. D–IBR–K39090–CA, Central Valley Project Long-Term Water Service Contract Renewals—American River Division, Proposes to Renew Long-Term Water Service Contracts, Sacramento, Placer, and El Dorado Counties, CA.

Summary: EPA expressed concerns due to cumulative impacts and environmental tradeoffs of potential increased water diversions from the American River. Rating EC2.

EIS No. 20050024, ERP No. D–AFS–J65437–CO, Gold Camp Road Plan, Develop a Feasible Plan to Manage the Operation of Tunnel #3 and the 8.5 mile Road Segment, Pike National Forest, Pike Peak Ranger District, Colorado Springs, El Paso County, CO.

Summary: EPA expressed environmental concerns due to air quality, water quality, and wildlife habitat impacts. Watersheds in the project area are in a degraded condition, and opening the road to motorized vehicles has the potential to increase sediment loads to the watersheds. Rating EC2.

EIS No. 20050028, ERP No. DS–FHW–L40203–AK, Juneau Access Transportation Project, Improvements in the Lynn Canal/Taiya Inlet Corridor between Juneau and Haines/Skagway, Updated Information, Special-Use-Permit and COE Section 10 and 404 Permits, Tongass National Forest, Klondike Gold Rush National Historic Park, Haines State Forest, City and Borough of Juneau, Haines Borough, Cities Haines and Skagway, AK.

Summary: EPA has environmental objections with the proposed project, since there was insufficient information to demonstrate that the preferred alternative is the least environmentally damaging practicable alternative in compliance with the Clean Water Act Section 404(b)(1) Guidelines. EPA recommends that the Final EIS include a preliminary 404(b)(1) evaluation, compensatory mitigation for unavoidable wetland impacts, site specific hydrological information and analysis for bridge/culvert designs, monitoring and adaptive management, and further analysis of indirect and cumulative effects. Rating EO2.

EIS No. 20050051, ERP No. DS–AFS–F65033–IL, Kudzu Eradication, Proposal to Eradicate Known Kudzu Infestations, Updated Information, Shawnee National Forest, Application for Herbicide and Mechanical Treatment, Jackson, Alexander and Pope Counties, IL.

Summary: EPA has no objections to the use of the two selected herbicides for control of Kudzu. Rating LO.

Final EISs

EIS No. 20040469, ERP No. F–COE–L01009–ID, Emerald Creek Garnet Project, Proposal to Mine Garnet Reserves within the St. Maries River Floodplain near Fernwood, Walla Walla District, Issuance of Several Permits, Benewah and Shoshone Counties, ID.

Summary: The Final EIS responded to EPA's previous concerns.

EIS No. 20050073, ERP No. F–AFS–L65464–ID, South Bear River Range Allotment Management Plan Revisions, Continued Livestock Grazing on Ten Allotments, Caribou-Targhee National Forest, Montpelier Ranger District, Bear Lake and Franklin Counties, ID.

Summary: The Final EIS provided additional information on alternatives, however EPA continues to have concerns about water quality and recommends long term protection and restoration of streams.

EIS No. 20050029, ERP No. FS–FHW–E40183–FL, FL–23 Extension (Branan

Field-Chaffee Road), Construction from FL–134 (103rd Street) to FL–8 (I–10) and FL–10 (US–90/Beaver Street), NPDES and U.S. Army COE Section 404 Permits Issuance, Clay and Duval Counties, FL.

Summary: EPA continues to have environmental concerns due to impacts to wetlands.

Dated: April 12, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–7571 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0091; FRL–7707–7]

The Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group Working Committee on Water Quality and Pesticide Disposal; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Working Committee on Water Quality and Pesticide Disposal (WC/WQ&PD) will hold a 2–day meeting, beginning on May 2, 2005 and ending May 3, 2005. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, May 2, 2005 through Tuesday, May 3, 2005 from 8:30 a.m. to 5 p.m. on Monday, May 2, 2005 and 8:30 a.m. to 12 p.m. on Tuesday, May 3, 2005.

ADDRESSES: The meeting will be held at Doubletree Hotel, 300 Army Navy Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Georgia A. McDuffie, Field and External Affairs Division] (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195]; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia]@epa.gov* or Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: *aapco@plainfield.bypass.com*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you all parties interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I 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–2005–0091. 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 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. Tentative Agenda

1. Results of state WQPD issue reporting system.
2. OPP/OECA budget cuts. Implications for pesticide field programs and state pesticide programs.
3. Performance measures: EPA's plans, state roles
4. Endangered species implementation update.
5. EPA interpretive statement on National Pollutant Discharge Elimination System (NPDES) permits for pesticide applications.
6. Pesticide disposal: Label statements, FIFRA-RCRA issues, container recycling.
7. Pesticide container security.
8. Pesticide container and containment rule.
9. Implementation of new active ingredient registration reviews by state lead agencies.
10. Atrazine monitoring/modeling update.
11. EPA fumigant cluster evaluation process.
12. California's PRESCRIBE system for endangered species restrictions.
13. Enantiomer-specific pesticide active ingredients.
14. Emergency powers for potable well cleanup.
15. State water quality training needs.
16. Office of Pesticide Programs and Office of Enforcement and Compliance Assurance Reports.
17. Wrap up and new issue.

List of Subjects

Environmental Protection Agency.

Dated: April 1, 2005.

William R. Diamond,

Director, Office of Pesticide Program Field and External Affairs Division.

[FR Doc. 05–7503 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7900–5]

Science Advisory Board Staff Office; Notification of an Upcoming Science Advisory Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the chartered SAB. The Board will discuss (1) science issues facing EPA Regions, and (2) may review and approve of one or more draft SAB Committee reports.

DATES: May 11–12, 2005. A public meeting of the Board will be held from 8:30 a.m. to 5:30 p.m (central time) on May 11, 2005, and from 8:30 a.m. to 9:30 a.m. (central time) on May 12, 2005.

ADDRESSES: The May 11, 2005 meeting of the Board will be held at the U.S. EPA Region 6 Headquarters Office, 1445 Ross Avenue, Dallas, TX 75202. The May 12, 2005 meeting will be accessible for the public by telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this meeting, including the telephone conference, or the SAB may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board via phone (202–343–9982) or e-mail at *miller.tom@epa.gov.* Those wishing to obtain the call-in number for the May 12, 2005 report review session should contact the DFO.

The SAB Mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice-including the specific draft report(s) to be reviewed, may be found on the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background on the Board Meeting: At this meeting, the Science Advisory Board will focus on the following: (a) Science programs of EPA Region 6, and (b) review one or more draft SAB Panel reports. Any additional items that might be discussed will be reflected in the meeting agenda that will be posted on the SAB Web site prior to the meeting.

(a) *EPA Regional Science Issues*—The SAB will receive briefings from, and discuss scientific issues, with Regional senior leadership and scientists. These are designed to (1) inform the SAB about regional science issues and concerns; (2) identify opportunities for future SAB and Regional office interactions on topics of interest; and (3) provide the regions with insights into the overall SAB role in advising the Agency on the technical underpinnings of the Agency's science and environmental decisions.

(b) *Review of SAB Committee Draft Reports:* The Board will review at least one draft SAB report at this meeting. Information on any draft reports to be reviewed, as well as the draft reports, will be on the SAB Web site at: *http://www.epa.gov/sab/drrep.htm* prior to the meeting.

Availability of Review Material for the Board Meeting: Documents that are the subject of this meeting are available from the SAB Staff Office Web site at: *http://www.epa.gov/sab.*

Procedures for Providing Public Comment: It is the policy of the EPA Science Advisory Board Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at Board meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) in writing via e-mail at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 2000/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact the relevant DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 11, 2005.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–7575 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0046; FRL–7705–4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on 1,1,2-Trichloroethane (1,1,2-TCE) (CAS No. 79-00-5). These data were submitted pursuant to an Enforceable Testing Consent Agreement (ECA)/Order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Test Data Submissions

Under 40 CFR 790.60, all TSCA section 4 ECAs/Orders must contain a statement that results of testing conducted pursuant to ECAs/Orders will be announced to the public in accordance with section 4(d) of TSCA.

Test data for 1,1,2-TCE, a hazardous air pollutant (HAP) listed under section 112 of the Clean Air Act Amendments of 1990, were submitted by the HAP Task Force. These data were submitted pursuant to a TSCA section 4 ECA/Order and were received by EPA on April 12, 2004; September 21, 2004; and December 1, 2004. The submissions include three final reports titled:

1. Route-to-Route Extrapolation of 1,1,2-TCE studies from the Oral Route to Inhalation Using Physiologically Based Pharmacokinetic Models: Immunotoxicity.

2. An Acute Neurotoxicity Study of 1,1,2-TCE in Rats.

3. Route-to-Route Extrapolation of 1,1,2-TCE Studies from the Oral Route to Inhalation Using Physiologically Based Pharmacokinetic Models: Acute Neurotoxicity.

1,1,2-TCE is used as a feedstock intermediate in the production of vinylidene chloride and some tetrachloroethanes. It is used as a solvent where its high solvency for chlorinated rubbers and other substances is needed, and for pharmaceuticals and electronic components.

EPA has initiated its review and evaluation process for this submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances, Toxic substances.

Dated: March 30, 2005.

Jim Willis,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–7585 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0023; FRL–7710–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 17, 2005 to March 25, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket identification (ID) number OPPT–2005–0023 and the specific PMN number or TME number, must be received on or before May 16, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet

under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2005–0023. 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 *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0023 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2005–0023 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 17, 2005 to March 25, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 25 PREMANUFACTURE NOTICES RECEIVED FROM: 03/17/05 TO 03/25/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0433	03/17/05	06/14/05	CBI	(G) Polymer dispersant admixture	(G) Carboxyalkenyl, telomer with mercaptoalkylol and sulfoalkyl-aminocarbonylalkenyl, sodium salt
P–05–0434	03/17/05	06/14/05	CBI	(G) Polymer dispersant admixture	(G) Carboxyalkenyl, telomer with mercaptoalkylol and sulfoalkyl-aminocarbonylalkenyl, ammonium salt
P–05–0435	03/17/05	06/14/05	CBI	(G) Polymer dispersant admixture	(G) Alkylaminium, salt with mercaptoalkylol, telmoer with sulfoalkyl-aminocarbonylalkenyl and carboxyalkenyl
P–05–0436	03/17/05	06/14/05	Eastman Chemical Company	(G) Modifier for polyester polymer	(G) Ethylene glycol ester of an aromatic substituted propenioc acid
P–05–0438	03/18/05	06/15/05	CBI	(S) Polymer is used as a component in a protective coating for industrial applications	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and hexahydro-1,3-isobenzofurandione, 3,5,5-trimethylhexanoate
P–05–0439	03/18/05	06/15/05	CBI	(G) Binder resin	(G) Acetate polymer with unsaturated alkane and alkenol, cyclic acetal with aldehyde
P–05–0440	03/18/05	06/15/05	CBI	(G) Binder resin	(G) Acetate polymer with unsaturated alkane and alkenol, cyclic acetal with aldehydes
P–05–0441	03/22/05	06/19/05	CBI	(G) Surfactant and/or defoamer	(G) 1,1′-thiobis-3,3′-bis(alkyloxy)alkanol derivatives
P–05–0442	03/22/05	06/19/05	CBI	(S) Coatings; inks	(G) Urethane acrylate
P–05–0443	03/23/05	06/20/05	CBI	(G) Lubricant additive	(G) 2-propenoic acid, 2-methyl-, C_{12-15}-branched and linear alkyl esters, polymers with alkenylamide and 2-ethylhexyl methacrylate

I. 25 PREMANUFACTURE NOTICES RECEIVED FROM: 03/17/05 TO 03/25/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0444	03/23/05	06/20/05	Firmenich Inc.	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc.	(S) 2-propenoic acid, 2-[1-(3,3-dimethylcyclohexyl)ethoxy]-2-methylpropyl ester
P–05–0445	03/24/05	06/21/05	CBI	(G) Thermoplastic resin processing aid for rubber manufacturing	(G) Octylphenol novolak resin
P–05–0447	03/23/05	06/20/05	CBI	(G) Intermediate in the manufacture of polyurethane	(G) Epoxidized soya oil reaction products with alcohols and polyols
P–05–0448	03/23/05	06/20/05	CBI	(G) Intermediate for manufacture of polyurethane	(G) Epoxidized soya oil reaction products with aqueous alcohol
P–05–0449	03/23/05	06/20/05	CBI	(G) Intermediate for manufacture of polyurethane articles	(G) Epoxidized soya oil reaction products with alcohol
P–05–0450	03/25/05	06/22/05	CBI	(S) Paint additive	(G) Acid modified phenolic resin
P–05–0451	03/25/05	06/22/05	CBI	(S) Paint additive	(G) Acid modified phenolic resin
P–05–0452	03/25/05	06/22/05	CBI	(S) Paint additive	(G) Acid modified phenolic resin
P–05–0453	03/25/05	06/22/05	CBI	(S) Paint additive	(G) Acid modified phenolic resin
P–05–0454	03/25/05	06/22/05	CBI	(S) Paint additive	(G) Acid modified phenolic resin
P–05–0455	03/25/05	06/22/05	CBI	(S) Paint additive	(G) Acid modified phenolic resin
P–05–0456	03/25/05	06/22/05	CBI	(G) Open, non-dispersive use.	(G) Poly alkyl methacrylates, hydroxyalkyl methacrylate, alkyl acrylate, keto-functional alkylmethacrylate, vinyl hetercyclic monomer, reaction product with heterocyclic functional amine.
P–05–0457	03/25/05	06/22/05	CBI	(G) Open, non-dispersive use.	(G) Styrene, cycloaliphatic acrylate, alkyl acrylates,hydroxyalkyl methacrylate copolymer.
P–05–0462	03/23/05	06/20/05	BASF Corporation	(G) Components in composite formulation	(G) Aromatic isocyanate methacrylate blocked
P–05–0463	03/23/05	06/20/05	BASF Corporation	(G) Components in composite formulation	(G) Aromatic isocyanate methacrylate blocked

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 12 NOTICES OF COMMENCEMENT FROM: 03/17/05 TO 03/25/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P–00–0916	03/18/05	02/26/05	(G) Toluene diisocyanate terminated polyether polyol
P–00–1061	03/21/05	02/22/05	(G) Modified ethylene/methyl acrylate copolymer
P–01–0322	03/18/05	03/01/05	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with fatty amines and ethylenediamine
P–02–0582	03/23/05	03/11/05	(G) Polyester isocyanate
P–04–0075	03/23/05	03/10/05	(G) Modified aluminum alkoxide
P–04–0158	03/18/05	02/11/05	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, hexadecyl 2-propenoate and octadecyl 2-propenoate*
P–05–0015	03/21/05	03/04/05	(G) Modified acrylic resin
P–05–0016	03/21/05	03/04/05	(G) Modified acrylic resin
P–05–0017	03/21/05	03/04/05	(G) Modified acrylic resin
P–05–0026	03/24/05	02/28/05	(G) Polyester isocyanate polymer
P–05–0129	03/24/05	02/24/05	(S) Nitric acid, reaction products with cyclododecanol and cyclododecanone, by-products from, high-boiling fraction, dilithium salts
P–05–0130	03/24/05	02/24/05	(S) Dodecanedioic acid, dilithium salt

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: April 8, 2005,

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–7589 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7900–8]

Water Pollution Control; Approval of Modification to Ohio's Approved National Pollutant Discharge Elimination System Permitting Program To Administer a State Sewage Sludge Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; approval of application.

SUMMARY: On March 16, 2005, pursuant to section 402(b) of the Clean Water Act (CWA), the Acting Regional Administrator for EPA, Region 5, approved the State of Ohio's modification of its existing National Pollutant Discharge Elimination System (NPDES) program to include the administration and enforcement of a state sewage sludge management program where it has jurisdiction.

FOR FURTHER INFORMATION CONTACT: John Colletti, at (312) 886–6106, NPDES Programs Branch, (WN–16J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, or electronically at *colletti.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means EPA.

Table of Contents

I Introduction
II Was notice provided seeking public comments on Ohio's program submittal?
III Was a public hearing held?
IV Did EPA receive any public comments?
V Does EPA's approval affect Indian Country (18 U.S.C. 1151) in Ohio?
VI Conclusion
VII **Federal Register** Notice of Approval of State NPDES Programs or Modifications
VIII Administrative Requirements
A. Endangered Species Act
B. National Historic Preservation Act
C. Other Provisions

I. Introduction

Ohio's application to modify its existing NPDES program to administer and enforce a state sewage sludge management program was submitted on May 12, 2004. Specifically, the state sought approval of a sludge management program which addresses the land application of sewage sludge, surface disposal of sewage sludge, and the landfilling of sewage sludge. The state's sludge management program does not extend to ''Indian Country'' as defined in 18 U.S.C. 1151, and will not include lands within the exterior boundaries of Indian reservations within or abutting the State of Ohio. Ohio did not seek approval for the incineration of sewage sludge or the land application of domestic septage. The sewage sludge management program is administered by the Ohio Environmental Protection Agency (Ohio EPA). Modifications were made to the program submittal based on discussions between EPA and Ohio EPA. These modifications are part of the record of the program application and review process.

II. Was Notice Provided Seeking Public Comments on Ohio's Program Submittal?

Ohio's application was described in the December 14, 2004 **Federal Register** at 69 FR 74522–74525, in which EPA requested public comments for a period of 45 days. Further notice was provided by way of publication in the following newspaper on December 14, 2004: The Blade (Toledo), and in the following newspapers on December 15, 2004: The Columbus Dispatch; The Cincinnati Enquirer; The Marietta Times, and; The Plain Dealer (Cleveland) in a effort to get wide coverage throughout the state. Additionally, notices were sent to all Ohio NPDES permitted facilities that would be impacted by the program and to people or organizations that Ohio EPA determined might have an interest in the program application. Copies of Ohio EPA's application package were available for public review at the EPA Region 5 Office and at Ohio EPA's regional offices and on their website.

III. Was a Public Hearing Held?

A public hearing was not held. The above notice explained that a hearing had not been scheduled and how a hearing could be requested. EPA will hold a public hearing whenever the Regional Administrator finds, on the basis of requests, a significant degree of public interest. No request for a hearing was received during the public comment period and therefore, no hearing was held.

IV. Did EPA Receive Any Public Comments?

Pursuant to the public notice, we accepted written comments from the public postmarked on or before January 31, 2005. During the comment period, we received two comments. These commenters fully support the modification of the state's NPDES program to include the administration and enforcement of a sewage sludge management program.

V. Does EPA's Approval Affect Indian Country (18 U.S.C. 1151) in Ohio?

Ohio EPA did not seek approval to administer and enforce the state sewage sludge management program for activities occurring in Indian Country. Our approval does not authorize Ohio EPA to carry out its sewage sludge program in Indian Country. Therefore, our approval of the state's sewage sludge management program will have no effect in Indian Country where EPA continues to implement and administer the NPDES program.

VI. Conclusion

The Ohio Environmental Protection Agency has demonstrated that it adequately meets the requirements for program modification to include sewage sludge management (specifically, the land application of sewage sludge, surface disposal of sewage sludge, and the landfilling of sewage sludge) as defined in the Clean Water Act and 40 CFR parts 123, 501, and 503.

At this time, EPA is withholding authorization to administer the sewage sludge management program for the incineration of sewage sludge, the land application of domestic septage, and activities occurring in Indian Country, as mentioned above.

VII. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Ohio's authority to administer the sewage sludge management program.

STATE NPDES PROGRAM STATUS

State	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved general permits program	Approved sludge management program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91	.....
Arizona	12/05/02	12/05/02	12/05/02	12/05/02	03/31/04
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86	.....
California	05/14/73	05/05/78	09/22/89	09/22/89	.....
Colorado	03/27/75	.....	.....	03/04/83	.....
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92	.....
Delaware	04/01/74	.....	.....	10/23/92	.....
Florida [1]	05/01/95	.....	05/01/95	05/01/95	.....
Georgia	06/28/74	12/08/80	03/12/81	01/28/91	.....
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91	.....
Illinois	10/23/77	09/20/79	.....	01/04/84	.....
Indiana	01/01/75	12/09/78	.....	04/02/91	.....
Iowa	08/10/78	08/10/78	06/03/81	08/12/92	.....
Kansas	06/28/74	08/28/85	.....	11/24/93	.....
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83	.....
Louisiana	09/11/96	09/11/96	09/11/96	09/11/96	.....
Maine	01/12/01	01/12/01	01/12/01	01/12/01	.....
Maryland	09/05/74	11/10/87	09/30/85	09/30/91	.....
Michigan	10/17/73	12/09/78	04/16/85	11/29/93	.....
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87	.....
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91	.....
Missouri	10/30/74	06/26/79	06/03/81	12/12/85	.....
Montana	06/10/74	06/23/81	.....	04/29/83	.....
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89	.....
Nevada	09/19/75	08/31/78	.....	07/27/92	.....
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82	.....
New York	10/28/75	06/13/80	.....	10/15/92	.....
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91	.....
North Dakota	06/13/75	01/22/90	.....	01/22/90	.....
Ohio	03/11/74	01/28/83	07/27/83	08/17/92	03/16/05
Oklahoma	11/19/96	11/19/96	11/19/96	09/11/97	11/19/96
Oregon	09/26/73	03/02/79	03/12/81	02/23/82	.....
Pennsylvania	06/30/78	06/30/78	.....	08/02/91	.....
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84	.....
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92	10/22/01
South Dakota	12/30/93	12/30/93	12/30/93	12/30/93	.....
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91	.....
Texas	09/24/98	09/24/98	09/24/98	09/24/98	09/24/98
Utah	07/07/87	07/07/87	07/07/87	07/07/87	06/14/96
Vermont	03/11/74	.....	03/16/82	08/26/93	.....
Virgin Islands	06/30/76	.....	.....	.....	.....
Virginia	03/31/75	02/09/82	04/14/89	04/20/91	.....
Washington	11/14/73	.....	09/30/86	09/26/89	.....
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82	.....
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86	07/28/00
Wyoming	01/30/75	05/18/81	.....	09/24/91	.....
Totals	46	40	34	44	07

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits) = 31.
Number of authorized Sludge Management Programs = 7.
[1] The Florida authorizations of 05/01/95 represents a phased NPDES program authorization to be completed by the year 2000.

VIII. Administrative Requirements

A. Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. 1536(a)(2), requires that federal agencies insure, in consultation with the United States Fish & Wildlife Service (FWS), that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of Federally-listed threatened or endangered species (listed species) or result in the destruction or adverse modification of critical habitat designated for such listed species.

By letter dated November 24, 2004, we requested concurrence from the Reynoldsburg Ecological Services Field Office of the U.S. Fish and Wildlife Service (FWS) that approval of Ohio EPA to implement a sewage sludge management program would not have any direct effects on federally-listed species or critical habitat as the proposed action is an administrative shift of authority that is not associated with any physical action that will alter habitat or affect biota. We received concurrence on February 7, 2005.

B. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), requires Federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on such undertakings. Under the ACHP's regulations (36 CFR part 800), agencies

consult with the appropriate State Historic Preservation Officer (SHPO) on federal undertakings that have the potential to affect historic properties listed or eligible for listing in the National Register of Historic Places.

By letter dated November 24, 2004, we requested concurrence from the State Historic Preservation Officer that approval of Ohio EPA to implement a sewage sludge management program would not have an adverse impact on historical and archeological resources. We received concurrence on January 4, 2005.

C. Other Provisions

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State Clean Water Act (CWA) program submission to constitute an adjudication because an ''approval,'' within the meaning of the Administrative Procedure Act (APA), constitutes a ''licence,'' which, in turn, is the product of an ''adjudication.'' For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here.

Authority for parts 123 and 501: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: March 31, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 05–7578 Filed 4–14–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 9, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Signature Acquisition Company, Inc., and Signature Bancshares, Inc., both of Olathe, Kansas; to become bank holding companies by acquiring 100 percent of the voting shares of Citizens Agency, Inc., and Frontier Bank, both of Haddam, Kansas.

Board of Governors of the Federal Reserve System, April 11, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–7541 Filed 4–14–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0260]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Extension of Currently Approved Collection;

Title of Information Collection: Protection of Human Subjects: Common Rule (56 FR 28003)

Form/OMB No.: OS–0990–0260;

Use: The Common Rule (56 FR 28003) establishes Federal policy for the protection of human subjects in research that is conducted or supported by Federal departments or agencies that are signatories to the Common Rule. The 1991 Common Rule requires institutions engaged in research which is covered by the Federal policy to establish procedures to report, disclose and maintain required information including information regarding the informed consent of research subjects and an institution's assurance of the establishment of an Insitutional Review Board.

Frequency: Recordkeeping, Reporting on occasion;

Affected Public: State, local, or tribal governments, Federal government, business or other for-profit, not-for-profit institutions; and individuals or households;

Annual Number of Respondents: 5,000;

Total Annual Responses: 446,334;

Average Burden Per Response: 2.5 hours;

Total Annual Hours: 1,105,834.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0260), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: April 7, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–7534 Filed 4–14–05; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection, Regular;

Title of Information Collection: Office for Human Research Protections, Fellowship Program;

Form/OMB No.: OS–0990–New;

Use: The Office for Human Research Protections (OHRP) developed the Fellowship Program to provide individuals who are interested in learning about OHRP's regulatory processes and programs with an opportunity to expand their knowledge and experience regarding the complexities of the ethical and regulatory issues relating to human subject protections in biomedical and behavioral research.

Frequency: Reporting;

Affected Public: Business or other for-profit;

Annual Number of Respondents: 25;

Total Annual Responses: 25;

Average Burden Per Response: 1 hour;

Total Annual Hours: 50;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–NEW), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 7, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–7535 Filed 4–14–05; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Emergency Clearance: Public Information Collection Requirements

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Emergency Clearance;

Title of Information Collection: Burn Bed Enumeration;

Form/OMB No.: OS–0990–New;

Use: The Office for Public Health Emerency Preparedness (OPHEP) will collect information on available burn beds, medical material for care of burn patients, and staffing levels to ensure the ability to manage a mass casualty event involving burns. No current system exists;

Frequency: Recording, Reporting, on occasion, third party disclosure;

Affected Public: Federal , business or other for profit, not for profit institutions;

Annual Number of Respondents: 5,876.

Total Annual Responses: 5,876;

Average Burden Per Response: 1 hour;

Total Annual Hours: 5,876;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed by April 22, 2005, directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990-New), Fax Number (202) 690–8715. Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: April 7, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–7536 Filed 4–14–05; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; 67 FR 46519, July 15, 2002; and 68 FR 787–793, January 7, 2003; 68 FR 8515–8517, February 21, 2003; 68 FR 64357–64358, November 13; as last amended at 69 FR 56433–56445, September 21, 2004).

This notice updates changes to HRSA's hierarchy affecting the Office of the Administrator; Office of Administration and Financial Management; Bureau of Primary Health Care; Maternal and Child Health

Bureau; Bureau of Health Professions; Healthcare Systems Bureau; HIV/AIDS Bureau; and Office of Performance Review.

This notice is to reflect the Order of Succession for the HRSA.

Section R–30, Order of Succession

During the absence or disability of the Administrator or in the event of a vacancy in the office, the first official listed below who is available shall act as Administrator, except that during a planned period of absence, the Administrator may specify a different order of succession. The order of succession will be as such:

1. Deputy Administrator;
2. Associate Administrator, Office of Administration and Financial Management;
3. Associate Administrator, Bureau of Primary Health Care;
4. Associate Administrator, Bureau of Health Professions;
5. Associate Administrator, HIV/AIDS Bureau;
6. Associate Administrator, Maternal and Child Health Bureau;
7. Associate Administrator, Healthcare Systems Bureau; and
8. Associate Administrator, Office of Performance Review.

Section R–40, Delegation of Authority

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this action will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this action.

This document is effective upon date of signature.

Dated: April 8, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. 05–7551 Filed 4–14–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting:

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: May 2–3, 2005.

Time: May 2, 2005, 8:30 a.m. to 5 p.m.

Agenda: NICHD Director's Report presentation, Regional Research Networks, and an update on the Rehabilitation Medicine Scientist Training Program.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Time: May 3, 2005, 8:30 a.m. to 12 p.m.

Agenda: Other business dealing with the NABMRR Board.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Ralph M. Nitkin, PhD, Director, BSCD, National Center for Medical Rehabilitation Research, National Institute of Child Health and Human Development, NIH, 6100 Building, Room 2A03, Bethesda, MD 20892, (301) 402–4206.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet training limitations imposed by the intramural research review cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/ncmrr.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: April 7, 2005.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7545 Filed 4–14–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 CC34—R01 GRANT APPLICATION.

Date: May 3, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, 3041, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mahadev Murthy, PhD, MBA, Scientific Review Administrator, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, MSC 9304, Room 3037, Bethesda, MD 20892–9304, (301) 443–0800, *mmurthy@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 8, 2005.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7546 Filed 4–14–05 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidential

trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwrranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Arousal and Attention Regulation in High Risk Children.

Date: April 27, 2005.

Time: 3:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (telephone conference call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 98.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: April 8, 2005.

Anna P. Snouffler,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7547 Filed 4–14–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive License: Therapeutics for the Treatment of Retinopathy

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), announces that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in 1. E–223–1992/0–US–01, ''SIGNAL TRANSDUCTION INHIBITOR COMPOUNDS'', by Elise Kohn, Lance Liotta, Christian Felder, issued Pat No. 5,359,078 (issue date October 25, 1994); 2. E–223–1992/0–US–02, ''SIGNAL TRANSDUCTION INHIBITOR TRIAZOLE AND DIAZOLE COMPOUNDS'' by Elise Kohn, Lance Liotta, Christian Felder, issued Pat No. 5,482,954 (issue date January 9, 1996); 3. E–223–1992/0–US–03, ''SIGNAL TRANSDUCTION INHIBITOR 1,2,3,-TRIAZOLO COMPOUNDS'' by Elise Kohn, Lance Liotta, Christian Felder, issued Pat No. 5,498,620, (issued date March 12, 1996); 4. E–223–1992/0–US–04, ''SIGNAL TRANSDUCTION INHIBITOR COMPOUNDS'' by Elise Kohn, Lance Liotta, Christian Felder, issued Pat No 5,705,514 (issued date January 6, 1998); 5. E–223–1992/0–US–05, ''SIGNAL TRANSDUCTION INHIBITOR COMPOUNDS'' by Elise Kohn, Lance Liotta, Christian Felder, issued Pat No 5,880,129 (issued date March 9, 1999); 6. E–068–1991/1–US–01, ''METHOD FOR INHIBITING METALLOPROTEINASE EXPRESSION'' by Elise Kohn, Lance Liotta, issued Pat No. Pat No. 5,602,156 (issued date February 11, 1997); 7. E–220–1993/1–US–01 ''METHOD FOR INHIBITING ANGIOGENESIS'' by Elise Kohn, Lance Liotta and Riccardo Alessandro issued patent No 5,744,492 (issue date April 28,1998), to RFE Pharma, having a place of business in Framingham, MA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to therapeutics for the treatment of retinopathy.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before June 14, 2005, will be considered.

ADDRESSES: Requests for copies of the patent and/or patent applications, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: John Stansberrry, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; telephone: (301) 435–5236; Facsimile: (301) 402–0220; e-mail: *stansbej@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The present invention provides composition of matter claims and methods for inhibiting angiogenesis in a host using carboxyamido-triazole (CAI) and related analogs. The calcium influx inhibitor and matrix metalloproteinase expression inhibitor, CAI, has shown anti-cancer activity due to its ability to influence signal transduction pathways. CAI and CAI analogues inhibit endothelial cell adhesion and migration in response to basement membrane components and thus block new vessel formation. Pharmaceutical applications directed to inhibiting angiogenesis offer novel approaches to the treatment of cancer, diabetic retinopathy, hemangiomata, vasculidities and other diseases associated with angiogenesis.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 6, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–7542 Filed 4–14–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Methods for Treating Inflammatory Bowel Disease Using Cholera Toxin B Subunit

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application 10/129,907, filed May 10, 2002 [DHHS Ref. E–263–1999/0–US–03], entitled ''Methods for treating inflammatory bowel disease using cholera toxin B subunit,'' to SBL Vaccin AB, which is located in Stockholm, Sweden. The patent rights in these inventions have

been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of cholera toxin B as a therapeutic treatment of inflammatory bowel disease, specifically Crohn's disease.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 14, 2005, will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Michelle A. Booden, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; telephone: (301) 451–7337; Facsimile: (301) 402–0220; e-mail: *boodenm@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology describes a method of treating or preventing inflammatory bowel disease by administrating cholera toxin B subunit (CT–B). Specifically, the patent application discloses administrating CT–B as a method for treating and preventing Crohn's disease (CD) and Ulcerative Colitis (UC) as well as a method for treating and preventing inflammation and/or autoimmune disorders mediated by increased interferon gamma (INF-γ) and or interleukin 12 (IL–12).

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 6, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–7543 Filed 4–14–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Heather Ranson, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Energy:* Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–4548; *GSA:* Mr.

Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mr. Charles C. Cocks, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200 (these are not toll-free numbers).

Dated: April 7, 2005.

Mark R. Johnston,

Director, Office of Special Needs, Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 4/15/05

Suitable/Available Properties

Buildings (by State)

Massachusetts

Bldgs. 3263–3266
Westover RAFB
Outer Road
Chicopee Co: MA 01022–
Landholding Agency: Navy
Property Number: 77200520002
Status: Excess
Comment: 3952 sq. ft., military family housing, needs rehab, off-site use only

Bldgs. 3200 thru 3214
Westover RAFB
Cowan Ave/Goodwin St
Chicopee Co: MA
Landholding Agency: Navy
Property Number: 77200520003
Status: Excess
Comment: various sq .ft., needs rehab, most recent use—admin., off-site use only

Pennsylvania

SSA Building
7959 Bustleton Avenue
Philadelphia Co: PA
Landholding Agency: GSA
Property Number: 54200520001
Status: Surplus
Comment: 12,500 sq. ft., most recent use—office, to be vacated 10/15/2005
GSA Number: 4–G–PA–0799

South Dakota

Post Office/Courthouse
102 4th Avenue
Aberdeen Co: Brown SD 57401–4309
Landholding Agency: GSA
Property Number: 54200510019
Status: Excess
Comment: 32,162 sq. ft., presence of asbestos, most recent use—office, 42% currently occupied/to be vacated 2007
GSA Number: 7–G–SD–0527

Tennessee

Memphis Motor Pool
150 Overton Avenue
Memphis Co: Shelby TN 38150–2720
Landholding Agency: GSA
Property Number: 54200520004
Status: Excess
Comment: 3128 sq. ft., most recent use—office/lab/warehouse
GSA Number: 4–G–TN–0659

Land (by State)

Iowa

Coralville Lake Project
North Liberty Co: Johnson IA 52317–
Landholding Agency: GSA
Property Number: 54200510017
Status: Unutilized
Comment: 9.1 acres, subject to existing easements, most recent use—roadside park
GSA Number: 7–D–IA–0416E

Kentucky

10.99 acres
Caseyville Access Site
Smithland Locks & Dam
Caseyville Co: Union KY
Landholding Agency: GSA
Property Number: 54200510018
Status: Excess
Comment: Boat ramp, flowage easement, occasional flooding, most recent use—recreation
GSA Number: 4–D–KY–05687E

Portion Tract #619
Lakeview Drive
Littcarr Co: Knott KY 41822–
Landholding Agency: GSA
Property Number: 54200520003
Status: Excess
Comment: 3.74 acres, 1acre is flat/2.74 acres steep hillside
GSA Number: 4–D–KY–0619

Suitable/Unavailable Properties

Buildings (by State)

Hawaii

Bldg. 1145
Naval Air Station
Barbers Point Co: Honolulu HI 96707–
Landholding Agency: Navy
Property Number: 77200510026
Status: Unutilized
Comment: 11,440 sq. ft., presence of asbestos/lead paint, poor condition, most recent use—youth center

Unsuitable Properties

Buildings (by State)

District of Columbia

Bldg. 20/Greenhouse
Naval Observatory
Washington Co: DC
Landholding Agency: Navy
Property Number: 77200520001
Status: Underutilized
Reason: Secured Area

Illinois

Trailers 009 & T023
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520001
Status: Excess
Reason: Extensive deterioration

Maryland

Bldg. C–15
Chesapeake Bay Detachment
Naval Research Lab
Chesapeake Co: MD 20732–
Landholding Agency: Navy
Property Number: 77200510027
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. C–24
Chesapeake Bay Detachment
Naval Research Lab
Chesapeake Co: MD 20732–
Landholding Agency: Navy
Property Number: 77200510028
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. C–68
Chesapeake Bay Detachment
Naval Research Lab
Chesapeake Co: MD 20732–
Landholding Agency: Navy
Property Number: 77200510029
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. C–70
Chesapeake Bay Detachment
Naval Research Lab
Chesapeake Co: MD 20732–
Landholding Agency: Navy
Property Number: 77200510030
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Missouri

6 Facilities
Whiteman AFB
Bates Co: MO
Landholding Agency: GSA
Property Number: 54200520002
Status: Surplus
Reason: Missile launch facilities
GSA Number: 7DMO0657–669

Nevada

3 Bldgs.
Nevada Test Site
23–790, 06–CP50, 26–2107
Mercury Co: Nye NV 89023–
Landholding Agency: Navy
Property Number: 77200510025
Status: Excess
Reasons: Contamination, Secured Area

Virginia

Bldg. 3233
Marine Corps Base
Quantico Co: VA
Landholding Agency: Navy
Property Number: 77200510031
Status: Excess
Reasons: Secured Area, Extensive deterioration

[FR Doc. E5–1712 Filed 4–14–05; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before May 16, 2005.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Permit No. TE–101265

Applicant: Dean Ransom Jr., Vernon, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) within Texas.

Permit No. TE–101264

Applicant: Vernadero Group, Inc., Scottsdale, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Arizona, New Mexico, Oklahoma, and Texas: Black-capped vireo (*Vireo atricapillus*), cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), golden-cheeked warbler (*Dendroica chrysoparia*), interior least tern (*Sterna antillarum*), lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), northern aplomado falcon (*Falco femoralis septentrionalis*), piping plover (*Charadrius melodus*), red-cockaded woodpecker (*Picoides borealis*), southwestern willow flycatcher (*Empidonax traillii extimus*), Yuma clapper rail (*Rallus longirostris yumanensis*), and Houston toad (*Bufo houstonensis*).

Permit No. TE–825473

Applicant: Kenneth Holmes, Dripping Springs, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Texas: Mexican long-nosed bat (*Leptonycteris nivalis*), black-capped vireo (*Vireo atricapillus*), brown pelican (*Pelecanus occidentalis*), golden-cheeked warbler (Dendroica chrysoparia), interior least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), red-cockaded woodpecker (*Picoides borealis*), southwestern willow flycatcher (*Empidonax traillii extimus*), Houston toad (*Bufo houstonensis*), and American burying beetle (*Nicrophorus americanus*).

Permit No. TE–101372

Applicant: William Hood, Round Rock, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Texas: Black-capped vireo (*Vireo atricapillus*), golden-cheeked warbler (*Dendroica chrysoparia*), interior least tern (*Sterna antillarum*), red-cockaded woodpecker (*Picoides borealis*), piping plover (*Charadrius melodus*), and Houston toad (*Bufo houstonensis*).

Permit No. TE–082492

Applicant: Charles D. Hathcock, Santa Fe, New Mexico.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico.

Authority: 16 U.S.C. 1531, *et seq.*

Dated: March 30, 2005.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 05–7565 Filed 4–14–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–920–1640–BF–NVZH]

Emergency Closure of Federal Lands, Lyon County, NV

AGENCY: Bureau of Land Management, Nevada.

ACTION: Emergency Closure of Federal Lands, Lyon County, Nevada.

SUMMARY: Notice is hereby given that all public lands at the Anaconda/Yerington Mine Site, located in Lyon County, Nevada, are closed to all forms of entry by the public. This closure is necessary to protect the public from hazards that are located throughout the former mine site. The Unilateral Administrative Order for Initial Response Activities issued by the United States Environmental Protection Agency, states; ''Carcinogens at the Site include, arsenic, chromium, the radioisotopes of uranium (uranium-234, uranium-235, and uranium-238), the radioisotopes of thorium (thorium-230 and thorium-232), and the radioisotopes of radium (radium-228 and radium-226). Aluminum, arsenic, beryllium, boron, cadmium, copper, iron, lead, manganese, mercury, molybdenum, selenium, zinc, uranium, and chloride and sulfate are toxic metal contaminants at the Site. Disturbed and concentrated heavy metals at the Site pose threats through inhalation and ingestion that can result in neurological, kidney, and liver damage, and behavior and learning problems.'' This closure will remain in effect until the Field Office Manager determines it is no longer needed. This closure does not apply to authorized employees and contractors.

DATES: *Effective Date:* This closure is effective immediately and will be verified upon publication in the **Federal Register.** It will remain in effect until the Manager, Carson City Field Office, determines it is no longer needed.

FOR FURTHER INFORMATION CONTACT: Craig Smith, Physical Scientist, Bureau of Land Management, 1340 Financial Blvd, Reno, NV 89520 Telephone (775) 861–6453.

SUPPLEMENTARY INFORMATION: The authority for the closure is 43 CFR 8364.1. Any person who fails to comply with this closure may be subject to the penalties provided in 43 CFR 8360.0–7 and are subject to arrest or fine not to exceed $1,000 or by imprisonment not to exceed 12 months. This order applies to all forms of entry, excluding (1) any emergency, law enforcement or other BLM vehicle while being used for

emergency or administrative purposes, and (2) any vehicle whose use is expressly authorized by the EPA Project Manager for this site. The public lands affected by the closure order are, T. 13 N., R. 25 E., sec. 4, W½SE¼SE¼ and SW¼SW¼; sec. 5, lots 1, 2, 3, 5, 6, and 7, and SW¼NE¼; sec. 8, lots 1, 3, and 4, and that portion of the SW¼SW¼ lying east of the eastern edge of the Haul Road to the Plant at Yerington Mine; sec. 9, W½NE¼NE¼, W½NE¼, NW¼SE¼NE¼, E½NW¼, NW¼NW¼, E½SW¼, and SW¼SW¼; sec. 16, lots 3, 4, 5, 7, 8, 9, 10, and 11, NW¼NE¼, and N½NW¼, and that portion of lot 6 lying west of the westerly right-of-way of State Route No. 339; sec. 17, lots 7, 14, and 15, and those portions of the N½SW¼NE¼, N½NW¼, and NE¼SE¼NW¼ lying north and east of the northeasterly edge of the Haul Road to the Plant at Yerington Mine; sec. 20, lot 5, and those portions of lots 2, 3, and 4, lying east of the toe of the Anaconda Mine waste rock dump; sec. 21, lots 1, 2, 3, and 4, and SW¼NW¼, and that portion of the SW¼ lying north and east of the toe of the Anaconda Mine waste rock dump, and those portions of lot 6, N½SW¼SE¼, SW¼SW¼SE¼, and W½SE¼SW¼SE¼ lying west of the toe of the Anaconda Mine waste rock dump; sec. 28, those portions of the N½NW¼, and W½NW¼NE¼ lying north of the toe of the Anaconda Mine waste rock dump.

The public lands affected by the restriction order constitute approximately 1,380 acres of land. These lands are depicted on maps in the Nevada State Office, where copies of these maps may be obtained.

Dated: April 11, 2005.

Donald T Hicks, Manager, Carson City Field Office.

[FR Doc. 05–7556 Filed 4–14–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado: Filing of Plats of Survey

April 5, 2005.

Summary: The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., April 6, 2005. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat, representing the dependent resurveys and surveys in Township 2 North, Range 81 West, Sixth Principal Meridian, Group 1397, Colorado, was accepted March 25, 2005.

The supplemental plat, amending the erroneously numbered lot 45, as shown on the plat approved October 30, 1997, to lot 47, and creating new lot 48, is based upon the survey plats approved November 29, 1984 and October 30, 1997 and the mineral survey M.S. 6771, The Cleveland Placer, approved May 16, 1891, and the mineral survey M.S. 1148, Rosa, cancelled August 9, 1984. This supplemental plat was accepted February 9, 2005.

The supplemental plat, correcting the numerical errors in the longitudes for the two witness posts on the Colorado/Wyoming State Boundary and Interstate Highway 25 (I–25) and the distance between Witness Point 44+58.83 and Mile Post 45, as shown on the plat approved May 18, 1998, and is based upon the dependent resurvey plat approved May 18, 1998, and was accepted March 31, 2005.

These plats and resurvey notes were requested by the Bureau of Land Management for administrative and management purposes.

The plat of survey requested by the Realty Staff, White River National Forest, Glenwood Springs, Colorado, on August 11, 2004, for the purpose of identifying the boundaries of National Forest lands to be conveyed and patented out of federal ownership in conjunction with a land exchange at the base of the ski area in Vail, Colorado, under Group 1415 was accepted February 3, 2005.

This plat was requested by the U.S. Forest Service, to facilitate a land exchange, and for administrative and management purposes.

Paul Lukacovic,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 05–7539 Filed 4–14–05; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: International Trade Commission.

ACTION: Agency proposal for the collection of information submitted to the Office of Management and Budget (OMB) for review; comment request.

SUMMARY: In accordance with the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to OMB for approval. The proposed information collection is a 3-year extension of the current ''generic clearance'' (approved by the Office of Management and Budget under control No. 3117–0016) under which the Commission can issue information collections (specifically, producer, importer, purchaser, and foreign producer questionnaires and certain institution notices) for the following types of import injury investigations: antidumping duty, countervailing duty, escape clause, NAFTA safeguard, market disruption, and ''interference with programs of the USDA.''

DATES: Written comments and recommendations for the proposed information collection should be submitted to OMB within 30 days of the date this notice appears in the **Federal Register**. Comments should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection proposal can be obtained from Debra Baker, Office of Investigations, U.S. International Trade Commission (telephone no. 202–205–3180; e-mail *Debra.Baker@usitc.gov*). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: (1) The proposed information collection consists of five basic forms, namely the *Sample Producers', Sample Importers', Sample Purchasers', and Sample Foreign Producers' questionnaires* (separate forms are provided for questionnaires issued for investigations and five-year reviews) and

Sample Notice of Institution for Five-Year Reviews. The types of items contained within the questionnaires and institution notice are largely determined by statute. Actual questions formulated for use in a specific investigation depend upon such factors as the nature of the industry, the relevant issues, the ability of respondents to supply the data, and the availability of data from secondary sources.

(2) The information collected through questionnaires issued under the generic clearance for import injury investigations are consolidated by Commission staff and form much of the statistical base for the Commission's determinations. Affirmative Commission determinations in antidumping and countervailing duty

investigations result in the imposition of additional duties on imports entering the United States. If the Commission makes an affirmative determination in a five-year review, the existing antidumping or countervailing duty order will remain in place. The data developed in escape-clause, market disruption, and interference-with-USDA-program investigations (if the Commission finds affirmatively) are used by the President/U.S. Trade Representative to determine the type of relief, if any, to be provided to domestic industries. The submissions made to the Commission in response to the notices of institution of five-year reviews form the basis for the Commission's determination of whether a full or expedited review should be conducted.

(3) Likely respondents consist of businesses (including foreign businesses) or farms that produce, import, or purchase products under investigation. Estimated total annual reporting burden for the period July 2005–June 2008 that will result from the collections of information is presented below.

TABLE 1.—PROJECTED ANNUAL BURDEN DATA, BY TYPE OF INFORMATION COLLECTION, JULY 2005–JUNE 2008

Item	Producer questionnaires	Importer questionnaires	Purchaser questionnaires	Foreign producer questionnaires	Institution notices for 5-year reviews	Total
	Estimated burden hours imposed annually for July 2005–June 2008					
Number of respondents	952	1,370	1,070	814	61	4,267
Frequency of response	1	1	1	1	1	1
Total annual responses	952	1,370	1,070	814	61	4,267
Hours per response	52.7	38.5	26.3	50.6	14.8	40.6
Total hours	50,170	52,745	28,141	41,188	904	173,148

(4) Responses to the questionnaires are mandatory. No record-keeping burden is known to result from the proposed collections of information.

Issued: April 12, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7599 Filed 4–14–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1071 and 1072 (Final)]

Magnesium From China and Russia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, 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 materially injured by reason of imports from China and Russia of magnesium,[2] provided for in subheadings 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 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). With regard to U.S. imports from China, the Commission also makes a negative finding with regard to critical circumstances.

Background

The Commission instituted these investigations effective February 27, 2004, following receipt of a petition filed with the Commission and Commerce by US Magnesium Corp. (''US Magnesium''), Salt Lake City, UT; the United Steelworkers of America, Local 8319, Salt Lake City, UT; and the Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374, Long Beach, CA. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of magnesium from China and Russia 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 investigations 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 October 21, 2004 (69 FR 61860). The hearing was held in Washington, DC, on February 23, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on April 11, 2005. The views of the Commission are contained in USITC Publication 3763 (April 2005), entitled Magnesium from China and Russia: Investigation Nos. 731–TA–1071 and 1072 (Final).

Issued: April 11, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7600 Filed 4–14–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–537]

In the Matter of Certain Weather Stations and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 15, 2005 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Richmond IP Holdings, LLC. A letter supplementing the complaint was filed on April 4, 2005. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain weather stations and components thereof by reason of infringement of claim 1 of U.S. Patent No. 5,978,738 and claims 26 and 30 of

[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] Commissioners Marcia E. Miller and Jennifer A. Hillman voted with the majority, except that they found granular magnesium to be a separate like product and found subject imports of granular magnesium from Russia to be negligible.

U.S. Patent No. 6,076,044. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplemental letter, except for any confidential information contained therein, are 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 8, 2005 *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain weather stations or components thereof by reason of infringement of claim 1 of U.S. Patent No. 5,978,738 or claims 26 or 30 of U.S. Patent No. 6,076,044, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is Richmond IP Holdings, LLC, 536 Granite Avenue, Richmond, VA 23226.

(b) The respondents are the following companies alleged to be in violation of Section 337, and are the parties upon which the complaint is to be served:

Hideki Electronics, Inc., 7865 SW Mohawk, Tualatin, OR 97062
Hideki Electronics, Ltd., Units 2304–06, Riley House, 88 Lei Muk Road, Kwai Chung, N.T., Hong Kong
Homedics-U.S.A., Inc., 3000 N. Pontiac Trail, Commerce Township, MI 48390
K&P International Holdings Limited, Units 2304–06, Riley House, 88 Lei Muk Road, Kwai Chung, N.T., Hong Kong
Springfield Precision Instruments, Inc., P.O. Box 4003, 76 West Passaic Street, Wood Ridge, NJ 07075
Taylor Precision Products LLC, 2311 W. 22nd Street, Oak Brook, IL 60523

(c) Thomas S. Fusco, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–E, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 12, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7601 Filed 4–14–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large

volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration to the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20201.

New General Wage Determination Decisions

The number of decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume V

Texas
TX20030121 (Jun. 13, 2003)
TX20030125 (Jun. 13, 2003)

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Massachusetts
MA20030001 (Jun. 13, 2003)
MA20030002 (Jun. 13, 2003)
MA20030003 (Jun. 13, 2003)
MA20030004 (Jun. 13, 2003)
MA20030006 (Jun. 13, 2003)
MA20030007 (Jun. 13, 2003)
MA20030009 (Jun. 13, 2003)
MA20030010 (Jun. 13, 2003)
MA20030017 (Jun. 13, 2003)
MA20030018 (Jun. 13, 2003)
MA20030019 (Jun. 13, 2003)
MA20030020 (Jun. 13, 2003)
MA20030021 (Jun. 13, 2003)

Volume II

Pennsylvania
PA20030001 (Jun. 13, 2003)
PA20030003 (Jun. 13, 2003)
PA20030004 (Jun. 13, 2003)
PA20030005 (Jun. 13, 2003)
PA20030007 (Jun. 13, 2003)
PA20030008 (Jun. 13, 2003)
PA20030009 (Jun. 13, 2003)
PA20030010 (Jun. 13, 2003)
PA20030017 (Jun. 13, 2003)
PA20030018 (Jun. 13, 2003)
PA20030020 (Jun. 13, 2003)
PA20030021 (Jun. 13, 2003)
PA20030023 (Jun. 13, 2003)
PA20030024 (Jun. 13, 2003)
PA20030025 (Jun. 13, 2003)
PA20030026 (Jun. 13, 2003)
PA20030028 (Jun. 13, 2003)
PA20030029 (Jun. 13, 2003)
PA20030030 (Jun. 13, 2003)
PA20030032 (Jun. 13, 2003)
PA20030038 (Jun. 13, 2003)
PA20030042 (Jun. 13, 2003)
PA20030052 (Jun. 13, 2003)
PA20030059 (Jun. 13, 2003)
PA20030060 (Jun. 13, 2003)
PA20030061 (Jun. 13, 2003)
PA20030065 (Jun. 13, 2003)

Virginia
VA20030003 (Jun. 13, 2003)
VA20030014 (Jun. 13, 2003)
VA20030015 (Jun. 13, 2003)
VA20030064 (Jun. 13, 2003)

West Virginia
WV20030002 (Jun. 13, 2003)
WV20030006 (Jun. 13, 2003)

Volume III

Florida
FL20030045 (Jun. 13, 2003)

Georgia
GA20030083 (Jun. 13, 2003)

North Carolina
NC20030050 (Jun. 13, 2003)

South Carolina
SC20030036 (Jun. 13, 2003)

Tennessee
TN20030004 (Jun. 13, 2003)
N20030016 (Jun. 13, 2003)
TN20030019 (Jun. 13, 2003)
TN20030025 (Jun. 13, 2003)

Volume IV

Illinois
IL20030002 (Jun. 13, 2003)

Michigan
MI20030004 (Jun. 13, 2003)
MI20030027 (Jun. 13, 2003)
MI20030064 (Jun. 13, 2003)
MI20030066 (Jun. 13, 2003)
MI20030067 (Jun. 13, 2003)
MI20030068 (Jun. 13, 2003)
MI20030069 (Jun. 13, 2003)
MI20030070 (Jun. 13, 2003)
MI20030071 (Jun. 13, 2003)
MI20030072 (Jun. 13, 2003)
MI20030073 (Jun. 13, 2003)
MI20030074 (Jun. 13, 2003)
MI20030075 (Jun. 13, 2003)
MI20030076 (Jun. 13, 2003)
MI20030077 (Jun. 13, 2003)
MI20030089 (Jun. 13, 2003)
MI20030090 (Jun. 13, 2003)
MI20030091 (Jun. 13, 2003)
MI20030092 (Jun. 13, 2003)
MI20030093 (Jun. 13, 2003)
MI20030094 (Jun. 13, 2003)
MI20030095 (Jun. 13, 2003)
MI20030096 (Jun. 13, 2003)
MI20030097 (Jun. 13, 2003)
MI20030105 (Jun. 13, 2003)
MI20030106 (Jun. 13, 2003)

Volume V

Missouri
MO20030001 (Jun. 13, 2003)
MO20030002 (Jun. 13, 2003)
MO20030003 (Jun. 13, 2003)
MO20030006 (Jun. 13, 2003)
MO20030007 (Jun. 13, 2003)
MO20030009 (Jun. 13, 2003)
MO20030010 (Jun. 13, 2003)
MO20030011 (Jun. 13, 2003)
MO20030013 (Jun. 13, 2003)
MO20030015 (Jun. 13, 2003)
MO20030016 (Jun. 13, 2003)
MO20030019 (Jun. 13, 2003)
MO20030020 (Jun. 13, 2003)
MO20030042 (Jun. 13, 2003)
MO20030043 (Jun. 13, 2003)
MO20030044 (Jun. 13, 2003)
MO20030046 (Jun. 13, 2003)
MO20030050 (Jun. 13, 2003)
MO20030052 (Jun. 13, 2003)
MO20030054 (Jun. 13, 2003)
MO20030055 (Jun. 13, 2003)
MO20030056 (Jun. 13, 2003)
MO20030057 (Jun. 13, 2003)
MO20030058 (Jun. 13, 2003)
MO20030061 (Jun. 13, 2003)

Texas
TX20030121 (Jun. 13, 2003)
TX20030125 (Jun. 13, 2003)

Volume VI

South Dakota
SD20030002 (Jun. 13, 2003)
SD20030006 (Jun. 13, 2003)
SD20030007 (Jun. 13, 2003)
SD20030008 (Jun. 13, 2003)
SD20030010 (Jun. 13, 2003)

Utah
UT20030001 (Jun. 13, 2003)
UT20030004 (Jun. 13, 2003)
UT20030006 (Jun. 13, 2003)
UT20030007 (Jun. 13, 2003)
UT20030023 (Jun. 13, 2003)
UT20030034 (Jun. 13, 2003)

Volume VII

Arizona
AZ20030001 (Jun. 13, 2003)
AZ20030002 (Jun. 13, 2003)
AZ20030003 (Jun. 13, 2003)
AZ20030004 (Jun. 13, 2003)
AZ20030005 (Jun. 13, 2003)

AZ20030010 (Jun. 13, 2003)
AZ20030011 (Jun. 13, 2003)
AZ20030012 (Jun. 13, 2003)
AZ20030016 (Jun. 13, 2003)
AZ20030017 (Jun. 13, 2003)
California
CA20030009 (Jun. 13, 2003)
CA20030013 (Jun. 13, 2003)
CA20030023 (Jun. 13, 2003)
CA20030027 (Jun. 13, 2003)
CA20030028 (Jun. 13, 2003)
CA20030029 (Jun. 13, 2003)
CA20030030 (Jun. 13, 2003)
CA20030032 (Jun. 13, 2003)
CA20030037 (Jun. 13, 2003)
Nevada
NV20030005 (Jun. 13, 2003)
NV20030009 (Jun. 13, 2003)

General Wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service *(http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 7 day of April 2005.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–7359 Filed 4–14–05; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–072)]

Aeronautics Research Advisory Committee, Aviation Safety Reporting System Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aviation Safety Reporting System Subcommittee (ASRSS).

DATES: Tuesday, May 24, 2005, 9 a.m. to 5 p.m.

ADDRESSES: Air Line Pilots Association, 1625 Massachusetts Ave, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/960–6059.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Remarks.

—Program Status.

—Strategic Planning.

—Closing Comments.

Attendees will be requested to sign a register. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: April 11, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–7538 Filed 4–14–05; 8:45 am]

BILLING CODE 7510–13–P

THE NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Proposed Collection, Comment Request, Program Evaluation of an IMLS Workshop to Foster Discussion of Collaborative Activities Among Libraries, Museums, and K–12 Education

ACTION: Notice, Request for Comments, Submission for OMB Approval.

SUMMARY: The Institute of Museum and Library Services, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and federal agencies to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)[44 U.S.C. 3508 (2)(A)]. This pre-clearance comment opportunity helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements or respondents can be properly assessed. The Institute of Museum and Library Services is currently soliciting comments concerning its planned evaluation of a workshop to foster discussion of strengthening K–12 education through collaborations among museums, libraries, and K–12 education.

A copy of the proposed information collection request can be obtained by contacting the individual listed below int he addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 16, 2005.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Send comments to: Karen Molylewski, Research Officer, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 802 Washington, DC 20506. Ms. Molylewski can be reached on telephone: 202–606–5551, or my e-mail at *kmotylewski@imls.gov.* After April 25, 2005, use the following contact information, Karen Motylewski, Research Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036–5841. Ms. Motylewski can be reached on telephone: 202–653–4686; Fax: 202–653–4625; or by e-mail at *kmotylewski@imls.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Institue of Museum and Library Services is charged with promoting the improvement of library and museum services for the benefit of the public. Through grantmaking and leadership activities, IMLS seeks to assure that libraries and museums are able to play an active role in cultivating an educated and engaged citizenry. IMLS builds the capacity of libraries and museums by encouraging the highest standards in management, public service, and education, leadership in the use of technology, strategic planning for results, and partnerships to create new networks that support lifelong learning and the effective management of assets.

According to its strategic plan, IMLS is dedicated to creating and sustaining a nation of learners by helping libraries and museum service their communities. IMLS believes that libraries and museums are key resources for education in the United Sates and promotes the vision of a learning society in which learning is seen as a community-wide responsibility supported by both formal and informal educational entities.

Current Actions

Under its convening authority IMLS brought together 64 professionals from the fields of museum, library, and K-12 education on August 30–31, 2004 to explore the current status of knowledge about the learning outcomes, impact, and potential implications of formal collaboration among organizations and institutions in these fields. IMLS's purpose was to increase cross-disciplinary information sharing for the purposes of strengthening learning in the K-12 years and building collaborations to support formal K-12 education. In accordance with the President's Management Agenda, the Government Performance and Results Act of 1993, and the Office of Management and Budget program assessment initiatives, IMLS wishes to measure the extent to which this meeting met IMLS's goals.

Agency: Institute of Museum and Library Services.

Title: Program evaluation of a workshop to foster discussion of strengthening learning through collaborations among libraries, museums, and K-12 education.

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums, libraries, K-12 education outlets.

Number of Respondents: 64.

Estimate Time Per Respondent: 20 minutes.

Total Burden Hours: 21.

Total Annualized capital/startup costs: 0.

Total Annual costs: $3000.00.

Contact: Send comments to Karen Motylewski, Research Officer, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 802, Washington, DC 20506. Ms. Motylewski can be reached on telephone: 202–606–5551, or by e-mail at *kmotylewki@imls.gov.* After April 25, 2005, use the following contact information. Karen Motylewski, Research Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036–5841. Ms. Motylewski can be reached on telephone: 202–653–4686; Fax: 202–653–4625; or by e-mail at *kmotylewski@imls.gov*

Dated: April 8, 2005.

Rebecca Danvers,

Director, Office of Research and Technology.

[FR Doc. 05–7548 Filed 4–14–05; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–007]

Exelon Generation Company, LLC; Correction; Notice of Public Meeting on the Draft Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** that announced a public meeting to be held to discuss the Draft Environmental Impact Statement for an ESP at the Exelon ESP Site and to accept public comments. This action is necessary to correct an erroneous street address in the April 8, 2005 notice (70 FR 18063).

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Kenyon, Project Manager, Office of Nuclear Reactor Regulation, telephone (301) 415–1120.

SUPPLEMENTARY INFORMATION: In the April 8, 2005 notice (70 FR 18063) on page 18063, in the second column, the street address is changed from ''401 N. Center Street'' to ''701 Illini Drive.''

Dated at Rockville, Maryland, this 12th day of April 2005.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 05–7566 Filed 4–14–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Nuclear Waste; Revised

The 159th Advisory Committee on Nuclear Waste (ACNW) meeting scheduled to be held on April 18–19, 2005, Room T–2B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland had been changed. The agenda for the meeting on April 18, 2005, has been modified as noted below:

- *10:30 a.m.–10:40 a.m.: Opening Remarks by the ACNW Chairman* (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.
- *10:40 a.m.–12 noon: Preparation of ACNW Reports/Letters* (Open)—The Committee will discuss letters on Groundwater Recharge Model Abstraction and Validation, and Time-Period of Compliance for a Proposed High-Level Waste Geologic Repository.
- *1:30 p.m.–3 p.m.: NMSS Division Directors' Quarterly Program Update* (Open)—The NMSS Division Directors will brief the Committee on recent activities of interest within their respective programs.
- *3 p.m.–3:45 p.m.: Low Level Waste Annual Update* (Open)—NRC staff will brief the Committee on planned activities and emerging issues in the area of Low Level Waste.
- *4 p.m.–5 p.m.: ACNW White Paper on Low-Level Radioactive Waste* (Open)—The Committee will comment on the draft outline for the proposed

White Paper. In addition, the Committee will discuss progress on specific sections of this White Paper, for example Section 1, ''Origins and History.''

• *5 p.m.–6 p.m.: Discussion of April 14–15, 2005, Visit to the Center for Nuclear Waste Regulatory Analyses (CNWRA)* (Open)—An ACNW Subcommittee will report on the outcome of its recent visit to the CNWRA to review ongoing technical assistance work for NMSS' HLW programs.

All the other items remain the same as previously published in the **Federal Register** on Thursday, April 7, 2005 (70 FR 17722).

For further information, contact Mr. Richard K. Major (telephone 301–415–7366), between 8:15 a.m. and 6 p.m. e.t.

Dated: April 11, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E5–1782 Filed 4–14–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of April 18, 25, May 2, 9, 16, 23, 2005.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of April 18, 2005

Tuesday, April 19, 2005

9 a.m.—Discussion of Enforcement Issue (Closed—Ex. 5).

9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1).

Wednesday, April 20, 2005

12:55 p.m.—Affirmation Session (Public Meeting) (Tentative) (Note: New Meeting Time).

a. (1) EXELON GENERATION COMPANY, LLC (Early Site Permit for Clinton ESP Site), Docket No. 52–007–ESP; (2) DOMINION NUCLEAR NORTH ANNA, LLC (Early Site Permit for North Anna ESP Site), Docket No. 52–008–ESP; (3) SYSTEM ENERGY RESOURCES, INC. (Early Site Permit for Grand Gulf ESP Site), Docket No. 52–009–ESP; (4) LOUISIANA ENERGY SERVICES, L.P. (National Enrichment Facility), Docket No. 70–3103–ML; (5) USEC Inc. (American Centrifuge Plant), Docket No. 70–7004 (Tentative)

1 p.m.—Briefing on Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Laura Gerke, 301–415–4099) (Note: New Meeting Time).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

3:15 p.m.—Meeting with Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela McIntosh, 301–415–5030) (Note: New Meeting Time).

This meeting will be Web cast live at the Web address—*htt://www.nrc.gov.*

Thursday, April 21, 2005

1:30 p.m.—Discussion of Security Issues (Closed—Ex. 1).

3 p.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of April 25, 2005—Tentative

Tuesday, April 26, 2005

9:30 a.m.—Briefing on Grid Stability and Offsite Power Issues (Public Meeting) (Contact: John Lamb, 301–415–1446).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

Week of May 2, 2005—Tentative

There are no meetings scheduled for the Week of May 2, 2005.

Week of May 9, 2005—Tentative

Wednesday, May 11, 2005

10:30 a.m.—All Employees Meeting (Public Meeting).

1:30 p.m.—All Employees Meeting (Public Meeting).

Week of May 16, 2005—Tentative

There are no meetings scheduled for the Week of May 16, 2005.

Week of May 23, 2005—Tentative

Monday, May 23, 2005

1:30 p.m.—Discussion of Security Issues (Closed—Ex. 1).

Wednesday, May 25, 2005

9:30 a.m.—Briefing on Results of the Agency Review Meeting (Public Meeting) (Contact: Lois James, 301–415–1112).

This meeting will be Web cast at the Web address—*http://www.nrc.gov.*

1:30 p.m.—Briefing on Threat Environment Assessment (Closed—Ex. 1).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: April 12, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–7654 Filed 4–13–05; 9:22 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates

published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in April 2005. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in May 2005. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the second quarter (April through June) of 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Funding Equity Act of 2004, for premium payment years beginning in 2004 or 2005, the required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid. Thus, the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in April 2005 is 4.78 percent (*i.e.,* 85 percent of the 5.62 percent composite corporate bond rate for March 2005 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between May 2004 and April 2005.

For premium payment years beginning in:	The required interest rate is:
May 2004	4.98
June 2004	5.26
July 2004	5.25
August 2004	5.10
September 2004	4.95
October 2004	4.79
November 2004	4.73
December 2004	4.75
January 2005	4.73
February 2005	4.66
March 2005	4.56
April 2005	4.78

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the second quarter (April through June) of 2005, as announced by the IRS, is 6 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	9/30/03	5
10/1/03	3/31/04	4
4/1/04	6/30/04	5
7/1/04	9/30/04	4
10/1/04	3/31/05	5
4/1/05	6/30/05	6

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the second quarter (April through June) of 2005 (*i.e.,* the rate reported for March 15, 2005) is 5.50 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From—	Through—	Interest rate (percent)
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	9/30/03	4.25
10/1/03	9/30/04	4.00
10/1/04	12/31/04	4.50
1/1/05	3/31/05	5.25
4/1/05	6/30/05	5.50

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in May 2005 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 11th day of April 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–7550 Filed 4–14–05; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 18, 2005:

A closed meeting will be held on Tuesday, April 19, 2005, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in closed session and that no earlier notice thereof was possible.

The subject matter of the closed meeting scheduled for Tuesday, April 19, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and a

Regulatory matter regarding financial institutions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: April 13, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–7746 Filed 4–13–05; 3:54 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51514; File No. SR–OPRA–2005–01]

Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Clarify How the Requirements of the OPRA Plan Pertaining to Vendors Apply to Persons Who Redistribute OPRA Data Over the Internet

April 8, 2005.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on March 30, 2005, the Options Price Reporting Authority (''OPRA'') [3] submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The proposed amendment would issue a written policy that clarifies how the requirements of the Plan pertaining to vendors would apply to persons who redistribute OPRA data over the Internet. The Commission is publishing this notice to solicit comments from interested persons on the proposed Plan amendment.

I. Description and Purpose of the Amendment

The purpose of the proposed Plan amendment is to adopt a written policy that would codify prior interpretations concerning how provisions of the Plan applicable to ''vendors'' would apply to persons who redistribute OPRA data by means of the Internet. In order to make this policy generally available to interested persons, OPRA proposes to publish it on its Web site, *http://www.opradata.com.* Because this policy pertains to the operation and implementation of the national market system facility administered by OPRA, OPRA proposes to treat the policy as part of the Plan and has filed it as an amendment to the Plan pursuant to Rule 11Aa3–2 under the Act.[4]

The Plan generally defines a ''vendor'' as a person who redistributes OPRA data (*i.e.,* options last sale and quotation reports and related information) to persons outside of its own organization. Persons who act as vendors are required to enter into vendor agreements with OPRA and pay applicable access and redistribution fees. As the Internet has increasingly been used as a means of providing OPRA data to subscribers and others, questions have arisen concerning exactly who among the various types of service providers involved in Internet transmission of OPRA data would be deemed to be performing the function of a vendor, and thereby be subject to the requirements of the Plan applicable to vendors. Although OPRA has informally adopted a policy that addresses these issues and has responded to questions in accordance with that policy, OPRA has not made its policy publicly available in writing until now. By making this policy available in writing on OPRA's Web site, OPRA wishes to be able to provide useful information to interested persons and avoid having to respond to individual questions on this topic.

The policy would include the following elements:

(A) A person who redistributes OPRA data to other persons outside of its own organization would be a ''vendor'' under the Plan. This would include persons who utilize the Internet as the means of redistribution.

(B) A person whose only function is to maintain an Internet site, on which there is a link or framed page through which OPRA data is provided by another person who is an OPRA vendor, would not itself be treated as a vendor, if certain additional conditions are satisfied. These additional conditions would be the following: (i) The person has no other involvement in the redistribution of OPRA data; (ii) the Internet site maintained by that person clearly and prominently identifies the vendor who provides the OPRA data through the link or framed page and states that such vendor is responsible for providing the data; and (iii) either the vendor, who is identified as providing the data, controls access to the data and pays applicable usage-based fees to OPRA, or the person, who maintains the Internet site and is not a vendor, is instead a ''correspondent subscriber'' who has entered into a Correspondent Subscriber Agreement with the vendor and who limits access

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

[4] 17 CFR 240.11Aa3–2.

to the link or framed page and pays fees to OPRA in accordance with that Agreement.

The text of the proposed policy is set forth below. Text additions are in *italics.*

* * * * *

OPRA Policy on Persons Providing Internet Access to Real Time OPRA Data

1. A person that redistributes OPRA data ''externally''—i.e., outside its own organization—is a ''Vendor'' for OPRA's purposes and is required to execute a Vendor Agreement with OPRA and pay a Redistribution Fee.[1] *This is true regardless of the method used to redistribute OPRA data, and extends to the redistribution of OPRA data by means of the Internet.*

2. Notwithstanding paragraph 1 above, OPRA does not regard a person as a Vendor, and the person will not be required to enter into a Vendor Agreement or pay a Redistribution Fee, if the person does no more than maintain an Internet site on which there is a link or a framed page through which OPRA data provided by a person that is an OPRA Vendor may be accessed, and if each of the following additional conditions is satisfied:

- *The person maintaining the Internet site has no involvement in the redistribution of OPRA data other than through a link or framed page on that Internet site;*
- *The Internet site clearly and prominently identifies the Vendor who provides OPRA data through the link or framed page on that site as the Vendor responsible for furnishing the data;*
- *Either:*
  - ○ *The Vendor who provides OPRA data through a linked site or framed page has control of the entitlement or enablement process for each person who has access to OPRA data by means of the linked site or framed page and pays applicable usage-based fees to OPRA in respect thereof; or*
  - ○ *The person who maintains the Internet site is a ''Correspondent Subscriber'' as defined in OPRA's Vendor Agreement—that is, the person has entered into and is in compliance with (i) a Professional Subscriber Agreement with OPRA and (ii) a Correspondent Subscriber Agreement with the Vendor who provides OPRA data through the link or framed page on the Internet site that satisfies the requirements of Section 7 of the Vendor's Vendor Agreement with OPRA—and limits access to OPRA data by means of the link or framed page to persons with whom it has entered into a Subscriber Agreement and in respect of whom it pays applicable usage-based fees to OPRA.*

* * * * *

[1] *OPRA's Usage-based Vendor Fee and Direct Access Fee may also apply.*

II. Implementation of Plan Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Rule 11Aa3–2 of the Act.[5]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment 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–OPRA–2005–01 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–OPRA–2005–01. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 OPRA. 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–OPRA–2005–01 and should be submitted on or before May 6, 2005.

[5] 17 CFR 240.11Aa3–2.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1786 Filed 4–14–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(29).

SECURTITES AND EXCHANGE COMMISSION

[Release No. 34–51520; File No. SR–NASD–2005–040]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Establishing a Pilot Period to Increase Position and Exercise Limits for Equity Options and Establishing a Reverse Collar Hedge Exemption

April 11, 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 March 30, 2005, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD 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 it 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 proposing to amend NASD Rule 2860 to increase certain options position limits for a pilot period and to expand the available equity option hedge exemptions to include ''reverse collars.'' The text of the proposed rule change is available on NASD's Web site (*http://www.nasd.com*), at NASD's

[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).

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, NASD 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. 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

NASD is proposing amendments to its options position and exercise limits in NASD Rule 2860 to conform to similar changes recently approved by the Commission or adopted by other self-regulatory organizations (''SROs'') with options rules.[5] The proposed rule change would increase, as part of a pilot program ending September 2, 2005 (unless extended) (''Pilot Period''), position limits for both standardized and conventional options.[6] Specifically, standardized and conventional options subject to a position limit of 13,500 contracts would increase to 25,000 contracts; standardized and conventional options subject to a position limit of 22,500 contracts would increase to 50,000 contracts; standardized and conventional options subject to a position limit of 31,500 contracts would increase to 75,000 contracts; standardized and conventional options subject to a position limit of 60,000 contracts would increase to 200,000 contracts; and standardized and conventional options subject to a position limit of 75,000 contracts would increase to 250,000 contracts. Options exercise limits, which are set forth in NASD Rule 2860(b)(4), and which incorporate by reference the position limits in NASD Rule 2860(b)(3), also would increase during the Pilot Period.

In addition, the proposed rule change would expand the available equity option hedge exemptions to include ''reverse collars.'' Options positions hedged pursuant to one of the qualified equity option hedge strategies are exempt from position limits for standardized options, and subject to position limits of five times the standardized limits for conventional options. The equity option hedge exemption for a reverse collar applies to a long call position accompanied by a short put position where the long call expires with the short put and the strike price of the long call equals or exceeds the short put and where each long call and short put position is hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the long call, short put position can be in-the-money at the time the position is established. The addition of the reverse collar equity option hedge exemption is not part of the pilot program and would be permanent.

NASD has proposed increasing the applicable position limits during the Pilot Period because, without such an increase, NASD's position limits would be lower than those of the Options Exchanges during the Pilot Period. This would result, with respect to standardized options, in inconsistent treatment of NASD member firms that are not members of an Options Exchange as well as the customers of such firms.[7] The proposed rule change also is necessary to maintain parity between the option position limits for conventional and standardized equity options as currently reflected in NASD rules.

NASD believes that the rationales articulated by the Options Exchanges in their rule filings filed with the Commission apply equally to the proposed rule change.[8] Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. NASD also agrees with the reasoning articulated by the Commission when approving changes to certain position limits in 1999:

[T]he Commission has been careful to balance two competing concerns when considering the appropriate level at which to set equity option position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market for the underlying security * * * At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs * * *[9] NASD submits that the proposed rule change is consistent with these Commission policies.

Also, as was emphasized by the Options Exchanges, there are financial and other regulatory protections in place to protect the markets from potential manipulations or other dislocations caused by holding or exercising excessive options positions.[10] NASD agrees with the Options Exchanges and also believes that increasing position limits during the Pilot Period should aid members in facilitating customer order flow and offsetting the risks that arise with such facilitation.

NASD has filed the proposed rule change for immediate effectiveness, and has requested that the Commission waive the 5-day pre-filing requirement

[5] *See* Securities Exchange Act Release No. 51322 (March 4, 2005), 70 FR 12260 (March 11, 2005) (SR–PHLX–2005–17); Securities Exchange Act Release No. 51317 (March 3, 2005), 70 FR 12254 (March 11, 2005) (SR–BSE–2005–10); Securities Exchange Act Release No. 51316 (March 3, 2005), 70 FR 12251 (March 11, 2005) (SR–AMEX–2005–029); Securities Exchange Act Release No. 51295 (March 2, 2005), 70 FR 11292 (March 8, 2005) (SR–ISE–2005–14); Securities Exchange Act Release No. 51286 (March 1, 2005), 70 FR 11297 (March 8, 2005) (SR–PCX–2003–55) (collectively ''Exchange Notices''); Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR–CBOE–2003–30) (''Approval Order'' and filers collectively referred to as ''Options Exchanges'').

[6] A ''conventional option'' is an option contract not issued, or subject to issuance by, The Options Clearing Corporation. NASD Rule 2860(b)(2)(N). Currently, position limits for standardized and conventional options are the same with respect to the same underlying security. The proposed rule change would maintain this parity between standardized and conventional options. NASD has maintained parity between conventional and standardized options since 1999. *See* Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930 (January 19, 1999) (SR–NASD–98–92). Before 1999, position limits on conventional options were three times greater than the limits for standardized options. *See* Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998) (SR–NASD–98–23).

The NASD's limits on standardized equity options are applicable only to those members that are not also members of the exchange on which the option is traded; the limits on conventional options are applicable to all NASD members. NASD Rule 2860(b)(1)(A); *see also* Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930 (January 19, 1999) (SR–NASD–98–92).

[7] *See* Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999) (SR–NASD–98–92) (''Without such an increase, the NASD's standardized equity options position limits would be lower than those established by the Options Exchanges and would lead to inconsistent treatment as to firms (and customers of such firms) that are NASD members but not members of an options exchange, the category of persons for whom our standardized position limits apply.'').

[8] *See generally* Exchange Notices and Approval Order.

[9] Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842, 1843 (January 12, 1999) (File Nos. SR–CBOE–98–25; SR-Amex-98–22; SR–PCX–98–33; SR-Phlx-98–36).

[10] *See generally* Exchange Notices and Approval Order (each of the Options Exchanges asserts that an increase in position limits does not present market manipulation concerns because of a combination of Commission oversight, SRO and member firm surveillance, and net capital, margin, and large position reporting requirements).

and the 30-day period for the proposed rule change to become operative, in order to allow NASD's position limits more quickly to conform to those of the Options Exchanges and allow conventional options position limits to maintain parity with position limits for standardized options.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that NASD's rules must 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. The proposed rule change is being made to achieve consistency between NASD's options position limits and those published in the Exchange Notices and approved in the Approval Order and thereby avoid inconsistent treatment of NASD member firms that are not members of an Options Exchange as well as the customers of such firms. In addition, the proposed rule change would maintain parity between the position limits for standardized and conventional options, during the Pilot Period.

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 been designated by NASD as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

Pursuant to Rule 19b–4(f)(6)(iii), a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and NASD gave 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 of the proposed rule change, or such shorter time as designated by the Commission.[16] NASD has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission has determined that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing notice requirement and the 30-day operative delay.[17] Waiving the pre-filing requirement and accelerating the operative date will allow NASD to more quickly conform its position and exercise limits and equity hedge exemption provisions , as described above, with those of the Options Exchanges.

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 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 No. SR–NASD–2005–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–NASD–2005–040. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of 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 No. SR–NASD–2005–040 and should be submitted on or before May 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–1783 Filed 4–14–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For the purposes only 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).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51511; File No. SR–NASD–2005–044]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to NASD Rules 4510(a) and 4520(a) to Clarify Rule Language Regarding Entry and Application Fees for Issuers Listed on a National Securities Exchange That Transfer Their Listing to Nasdaq

April 8, 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 April 4, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. Nasdaq filed this proposal pursuant to Section 19(b)(3)(A)(i)[3] of the Act and Rule 19b–4(f)(1) thereunder as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule,[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

Nasdaq is amending NASD Rules 4510(a) and 4520(a) to clarify rule language regarding entry and application fees for issuers listed on a national securities exchange that transfer their listing to Nasdaq. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[5]

4510. The Nasdaq National Market

(a) Entry Fee

(1)–(5) No change.

(6) The fees described in this Rule 4510(a) shall not be applicable [to any issuer that is] *with respect to any securities that (i) are* listed on a national securities exchange *but not listed on Nasdaq, or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities* [and that] transfers [its] *their* listing *exclusively* to the Nasdaq National Market.

(7) No change.

(b)–(e) No change.

4520. The Nasdaq SmallCap Market

(a) Entry Fee

(1)–(5) No change.

(6) The fees described in this Rule 4520(a) shall not be applicable [to any issuer that is] *with respect to any securities that (i) are* listed on a national securities exchange *but not listed on Nasdaq, or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities* [and that] transfers [its] *their* listing *exclusively* to the Nasdaq SmallCap Market.

(7) No change.

(b) No change.

(c) Annual Fee

(1)–(4) No change.

(5) Total shares outstanding means the aggregate of all classes of equity securities included in The Nasdaq SmallCap Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

[(5)] *(6)* In lieu of the fees described in Rule 4510(c)(1), the annual fee shall be $15,000 for each issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq. Such annual fee shall be assessed on the first anniversary of the issuer's listing on Nasdaq.

(d) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In January 2005, the Commission approved a proposed rule change by Nasdaq to eliminate the entry and application fees under NASD Rules 4510(a) and 4520(a) for companies listed on a national securities exchange (an ''exchange'') that transfer their listing to the Nasdaq National Market or the Nasdaq SmallCap Market.[6] Nasdaq has determined that the text of NASD Rules 4510(a)(6) and 4520(a)(6) (the ''Transfer Rules'') may be ambiguous when applied to issuers transferring between the Nasdaq SmallCap Market and the Nasdaq National Market, and is submitting this proposed rule change to ensure that the rule text more clearly reflects Nasdaq's interpretation of the Transfer Rules.

The intent of the Transfer Rules was to remove disincentives for issuers whose primary listing is on a national securities exchange to drop their exchange listing and switch to Nasdaq, thereby promoting competition between Nasdaq and exchange markets. Thus, an issuer whose securities are listed exclusively on an exchange, or whose securities are dually listed on the New York Stock Exchange and Nasdaq,[7] would pay no entry fee if the issuer dropped its exchange listing and moved exclusively to Nasdaq.

As originally filed, however, the Transfer Rules arguably could be read to offer a fee waiver to issuers that ''phase up'' from the Nasdaq SmallCap Market to the Nasdaq National Market (or ''phase down'' from the National Market to the SmallCap Market) if such issuers happen to have a secondary listing on an exchange that they relinquish at the time of their transfer. Accordingly, Nasdaq is amending the Transfer Rules to make it clear that they do not apply in such circumstances.[8]

In addition to the fact that the Transfer Rules were never intended to apply to phase up or phase down scenarios, it should be noted that the policy rationale for the Transfer Rules

[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] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com.* No pending rule filings would affect the portions of these rules amended herein.

[6] Securities Exchange Act Release No. 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005) (SR–NASD–2004–140).

[7] *See* NASD Rule 4400 and IM–4400. As provided in IM–440, transactions in such dually listed securities are reported under the Consolidated Tape Association plan, rather than the Nasdaq UTP Plan.

[8] The proposed rule change also corrects a typographical error in NASD Rule 4520(c).

does not apply with equal force to such scenarios. An issuer with a SmallCap Market or National Market listing whose trades are reported under the Nasdaq UTP Plan is already a Nasdaq-listed company in all respects, and therefore it cannot be argued that fees or any other factor are inhibiting the issuer from becoming listed on Nasdaq. Many SmallCap companies that obtain a primary listing on Nasdaq at the time of their initial public offerings also list on a national securities exchange because the exchange listing provides an exemption from ''blue-sky laws'' that is not available from a listing on the SmallCap Market alone. When such a company becomes eligible for a phase up to the National Market, it may decide that its exchange listing is superfluous, since a National Market listing confers the same blue-sky exemption as an exchange listing, but Nasdaq does not see a competitive justification for encouraging such an issuer to drop its exchange listing at that time. In fact, these issuers are already familiar with the benefits of the Nasdaq marketplace and, therefore, interpreting the rule in this manner would result in Nasdaq offering a financial incentive focused solely on whether a Nasdaq-listed issuer also pays listing fees to a competitor. Similarly, although issuers phasing down from the National Market to the SmallCap Market may be less likely to have exchange listings at the time of their phase down than issuers that are phasing up, Nasdaq sees no competitive justification for encouraging such issuers to drop their exchange listing, particularly since the listing will provide them the benefit of a blue-sky exemption when they move to the SmallCap market. Finally, Nasdaq is concerned that a broad application of the Transfer Rules to phase up situations could be ''gamed'' by issuers who may find it financially advantageous to obtain, and then relinquish, an exchange listing in conjunction with a planned phase up application.

Nasdaq has not observed any difference in the time and effort needed to review a phase up or phase down application for an issuer that has a secondary listing on an exchange as compared to an issuer that has no such secondary listing. Accordingly, there does not appear to be a cost justification, let alone a competitive justification, for waiving entry fees solely for those phase-up issuers that happen to have an exchange listing that they drop at the time of the phase up. Similarly, applications of issuers that are phasing down to the SmallCap Market are likely to involve more time and effort on the part of Nasdaq staff than issuers that join the SmallCap Market after an initial public offering, since phase downs are often the result of a current or incipient failure to meet the requirements of the Nasdaq National Market. Finally, Nasdaq notes that the financial impact of a broad waiver for phase up and phase down scenarios could be far more significant than the financial impact of the narrower application of the Transfer Rules intended by Nasdaq.

Nasdaq recognizes, however, that some issuers submitting applications for phase up or phase down since September 20, 2004, the effective date of the Transfer Rules, may have concluded that the Transfer Rules would apply to them in the event that they drop their exchange listings. Although application of the Transfer Rules to such issuers is contrary to the intent underlying the rules, Nasdaq recognizes the ambiguity of the rules as originally drafted, and will therefore waive entry fees for any issuer (i) listed on Nasdaq and on an exchange, (ii) that has had an application for a phase up or phase down pending at any time between September 17, 2004, and the effective date of this proposed rule change, and (iii) that initiates a process to delist from the exchange on which it is listed within five days after the date on which such phase up or phase down application is approved. The clarification adopted by this proposed rule change will apply to all issuers submitting applications after April 4, 2005, the effective date of the rule change.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[9] in general, and with Sections 15A(b)(5) and 15A(b)(6) of the Act,[10] in particular, in that it is designed to provide an equitable allocation of reasonable dues, fees, and charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change will ensure that issuers moving from one tier of the Nasdaq market to another do not pay disparate entry fees merely because they relinquish a pre-existing exchange listing.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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. Specifically, Nasdaq believes that the proposed rule change will enhance competition by allowing issuers that are listed on an exchange to move their listing to Nasdaq without being required to pay a fee that is duplicative of fees already paid to an exchange.

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.

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–2005–044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5) and (6).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–044. 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–2005–044 and should be submitted on or before May 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1785 Filed 4–14–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51512; File No. SR–PCX–2004–124]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments Nos. 1, 2, and 3 by the Pacific Exchange, Inc. Relating to Adjournments of a Hearing Within Three Business Days of a Scheduled Hearing Session

April 8, 2005.

On December 15, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 amendments to PCX Rules 12.6 and 12.18 and PCX Equities, Inc. (''PCXE'') Rules 12.7 and 12.19. On February 3, 2005, PCX filed Amendment No. 1 to the proposed rule change.[3] On the same day, PCX filed Amendment No. 2 to the proposed rule change, which replaced Amendment No. 1 in its entirety.[4] On February 28, 2005, PCX filed Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 8, 2005.[6] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

I. Description of Proposed Rule Change

The Exchange proposed amending PCX Rules 12.6 and 12.18 and PCXE Rules 12.7 and 12.19 to modify the arbitration adjournment provision to charge parties a fee of $100.00 per arbitrator in the event that a hearing is adjourned within three business days of a scheduled hearing session.

The Exchange has found that parties often seek to adjourn scheduled hearing sessions at the last minute for various reasons, which may include scheduling conflicts of parties or their counsel, ongoing settlement discussions, or other personal matters unrelated to the arbitration process. Regardless, last minute adjournments result in inconvenience and lost income to the arbitrators. The Exchange, therefore, proposed charging parties a nominal fee of $100.00 per arbitrator in the event that a hearing is adjourned within three business days of a scheduled hearing session.

The arbitrators will have discretion to allocate the fee among the requesting parties, if more than one party requests the adjournment. The arbitrators may also allocate all or a portion of the fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the adjournment. In the event that an extraordinary circumstance prevents a party or parties from making a timely adjournment request, the arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received. The fee will not apply to the adjournment of a pre-hearing session. It will, however, apply if the parties agree to settle their dispute and one or more parties makes an adjournment request within three business days before a scheduled hearing session. This will be considered to be an adjournment request that is made and granted for purposes of proposed PCX Rule 12.18 and PCXE Rule 12.19.

The Exchange stated that it believes this fee is reasonable in order to compensate arbitrators for their inconvenience due to last minute adjournments.

II. Discussion and Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange[7] and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)[9] of the Act, in general, and Section 6(b)(5)[10] of the Act, in particular, in that it will promote just and equitable principles of trade and protect investors and the public interest by encouraging arbitrators to agree to serve in PCX arbitration proceedings. The proposal is also consistent with Section 6(b)(4)[11] of the Act in that it provides for the equitable allocation of reasonable charges among PCX members and other persons using the PCX arbitration forum.

The Commission believes that the proposed rule change will promote just and equitable principles of trade by providing PCX with an effective means of addressing the problems associated with last minute adjournments. The rule change should discourage frivolous adjournment requests while promoting more efficient use of the arbitration process by encouraging parties, when

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter dated February 3, 2005 from Tania Blanford, Regulatory Staff Attorney, to Nancy Sanow, Assistant Director, Division of Market Regulation.

[4] *See* letter dated February 3, 2005 from Tania Blanford, Regulatory Staff Attorney, to Nancy Sanow, Assistant Director, Division of Market Regulation.

[5] *See* letter dated February 28, 2005 from Tania Blanford, Regulatory Staff Attorney, to Nancy Sanow, Assistant Director, Division of Market Regulation.

[6] Exchange Act Rel. No. 51296 (March 2, 2005), 70 FR 11304 (March 8, 2005).

[7] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

appropriate, to settle their disputes early to avoid additional fees. Compensating arbitrators for their inconvenience due to last minute adjournments should help PCX maintain a pool qualified arbitrators by assuring arbitrators of some compensation in the event that a scheduled hearing is adjourned at the last minute. In sum, the Commission believes that, by providing a more efficient and effective forum for investors to address grievances, the proposed rule change will serve to protect investors and the public interest. Moreover, the Commission believes that the proposed rule change will provide for the equitable allocation of the new adjournment fee among PCX members and other persons using the PCX arbitration forum, and that the new fee is reasonable.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–PCX–2004–124) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1784 Filed 4–14–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10107 and # 10108]

FLORIDA Disaster # FL–00001

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida, dated April 11, 2005.

Incident: Apartment Fire.

Incident Period: March 24, 2005.

DATES: *Effective Date:* April 11, 2005.

Physical Loan Application Deadline Date: June 10, 2005.

EIDL Loan Application Deadline Date: January 11, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration on April 11, 2005, applications for disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Broward

Contiguous Counties: Florida

Collier, Hendry, Miami-Dade, Palm Beach

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.000
Businesses & small agricultural cooperatives without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	4.750
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 10107 5 and for economic injury is 10108 0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Dated: April 11, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–7558 Filed 4–14–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5051]

Culturally Significant Objects Imported for Exhibition Determinations: ''Mir Iskusstva: Russia's Age of Elegance''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Mir Iskusstva: Russia's Age of Elegance,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Joslyn Art Museum, Omaha, Nebraska, from on or about June 4, 2005 to on or about September 14, 2005, and at the Frederick R. Weisman Art Museum, Minneapolis, Minnesota, from on or about October 7, 2005 to on or about January 8, 2006, and at the Princeton University Art Museum, Princeton, New Jersey, from on or about February 25, 2006 to on or about June 11, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453–8050). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 15, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–7590 Filed 4–14–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5052]

Culturally Significant Objects Imported for Exhibition Determinations: ''Tutankhamun and the Golden Age of the Pharaohs''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April

15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Tutankhamun and the Golden Age of the Pharaohs,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA from on or about June 15, 2005 to on or about November 15, 2005, Museum of Art, Fort Lauderdale, FL from on or about December 15, 2005 to on or about April 23, 2006, Field Museum, Chicago, IL from on or about May 26, 2006 to on or about January 1, 2007, Franklin Institute, Philadelphia, PA from on or about January 31, 2007 to on or about September 30, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/453–8048). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 8, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–7715 Filed 4–14–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. RSPA–04–18584; Notice 1]

Pipeline Safety: Controller Certification Pilot Program (CCERT)

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

ACTION: Notice; Controller Certification Pilot Program.

SUMMARY: This notice seeks participants and provides information about the certification study project affecting individuals who operate computer-based systems for controlling the operation of gas and hazardous liquid pipelines (pipeline controllers) and the associated pilot program required by Section 13(b) of the Pipeline Safety Improvement Act of 2002 (PSIA). This notice describes the purpose and scope of a project being undertaken by the Pipeline and Hazardous Materials Safety Administration's (PHMSA) (formerly the Research and Special Programs Administration) Office of Pipeline Safety (OPS) to determine what actions it should recommend for additional assurance that individuals who operate computer-based systems for controlling the operation of gas and hazardous liquid pipelines are adequately qualified and, if deemed necessary, certified to perform their job responsibilities. The public is invited to inquire about this project through the contact information below, and is encouraged to provide comments.

FOR FURTHER INFORMATION CONTACT: Byron Coy, (telephone: 609–989–2180; e-mail: *byron.coy@dot.gov*) regarding the subject matter of this notice. Additional information about this notice can be accessed in the docket captioned above on the DOT Docket Management System Web site at: *http://dms.dot.gov.*

DATES: Persons interested in participating in the pilot program or submitting written comments on the controller certification overall project or the pilot operator program should do so by May 16, 2005.

ADDRESSES: For access to the docket to read background documents or comments, go to *http://dms.dot.gov* or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may submit written comments to the docket by any of the following methods:

- Mail: Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., 20590–0001. Anyone wanting confirmation of mailed comments must include a self-addressed stamped postcard.
- Hand delivery or courier: Room PL–401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.
- Web site: Go to *http://dms.dot.gov*, click on ''Comments/Submissions'' and follow instructions at the site.

All written comments should identify the docket number and notice number stated in the heading of this notice.

Background

Over the past eight years, 10 of the 18 pipeline incident/accident investigations conducted by the National Transportation Safety Board (NTSB) have identified controller's actions or reactions, or the computer systems they use, as significant factors in detecting or contributing to the initial event, influencing reaction time or affecting the magnitude of an event. Controllers are individuals that use computers to control pipelines. Section 13(b)(1)(A) requires PHMSA to ''develop tests and other requirements for certifying the qualifications of individuals who operate computer-based systems for controlling the operations of pipelines.''

For the purposes of this overall project, *tests* refers to the examination and evaluation of: (a) Current operator training and qualification processes and practices (through the pilot operator program), (b) current regulations, (c) industry standards, including ASME B31Q, and (d) program development, practices, and requirements for control room operating personnel that are applied in other industries.

Section 13(b)(1)(B) requires PHMSA to ''establish and carry out a pilot program for 3 pipeline facilities under which the individuals operating computer-based systems for controlling the operations of pipelines at such facilities are required to be certified under the process established under subparagraph (A).'' Further, Section 13(b)(2) requires PHMSA to develop a report to Congress on the results of the pilot program that includes recommendations on the certification of pipeline controllers.

Overall Project Objectives

This overall project will explore whether current regulations are sufficient to address the findings resulting from these accidents and other project development activities or whether regulations need to be enhanced to provide additional controller qualification requirements. The overall project will also determine whether a certification process for controllers is warranted.

The objectives of the overall project are to:

- Define and document current practices and processes that pipeline operators use to determine that controllers have adequate knowledge, skills and abilities to perform their assigned tasks.
- Evaluate and determine what practices and processes best serve to substantiate that individual pipeline controllers have adequate knowledge, skills and abilities to perform their assigned tasks.
- Determine what evaluation techniques, criteria, and validation frequency can most effectively demonstrate proficiency.

• Define what administrative procedures, records, and certification criteria can best serve to demonstrate the aforementioned objectives.

• Determine how specific or uniform such practices, process content, evaluation parameters, and administrative procedures are across the various types of pipeline operators.

• Determine the adequacy of the existing operator personnel qualification requirements for controllers, in light of the significant impact they can have on pipeline safety and integrity.

• Develop conclusions and establish recommendations to be reported to Congress at the end of the project.

Overall Project Strategy

OPS experience, supplemented by consultation with a specifically assembled focus group, and a variety of operator interviews conducted at the beginning of this project have all validated that qualification practices for controllers among pipeline operators vary greatly. These differences are based on pipeline characteristics and varying operational needs. Even within each operator type [gas transmission, local distribution companies (LDC), hazardous liquids, liquefied natural gas (LNG)], there are varied and sometimes unique safety-sensitive job tasks that controllers are expected to perform. These differences would make it difficult to develop a substantive universal test to qualify controllers. Thus, a uniform controller evaluation/certification test for the entire industry would likely not address many operator-specific and sometimes unique tasks critical to pipeline integrity and safety.

To provide a higher assurance that controllers possess adequate knowledge, skills and abilities, the project team will be focusing on the content of the pipeline operators' administrative, training and evaluation techniques that make up the controller qualification process. Each operator should have a controller qualification program that is specifically designed to address the particular attributes and needs of its pipeline. The project team will recommend a specific set of topic areas and content with a level of adequacy and thoroughness expected of an operator's qualification program and associated administrative processes. Project recommendations will address criteria to determine adequate material content, a structured and encompassing qualification process, and thoroughness and adequacy in an operator's training, performance monitoring and periodic evaluation activities. Each of these elements is discussed below.

Description of the Project Scope

PSIA–2002, Section 13(b) specifically uses the phrase ''persons who use computers to control pipelines.'' Section 13(b) implies that an elevated risk to the public would result from ineffective qualification of persons who use computers to control pipelines. The Act does not specifically identify or exclude any type of pipeline based on its operating pressure, degree of sophistication, pipe mileage, or how computers are used to control the pipeline system. Since the application of computer technology is prolific, sophisticated computer control systems (SCADA) have now been deployed in a wide variety of applications, including individual remote stations, thereby defining the range of the project beyond the traditional Supervisory Control and Data Acquisition systems (SCADA) control room.

SCADA systems are used extensively in the pipeline industry. These systems provide a means for controllers (an individual or team) to monitor and control pipeline stations and other facilities. These systems can provide remote control over great distances. Application of SCADA systems has resulted in a reduction of pipeline field staffs, making the role of the controller critical to safety and integrity in pipeline operations. In cross-country hazardous liquid and gas transmission pipelines, controllers routinely monitor and send commands to change flow rates and pressures. Prompted by an assortment of factors, hazardous liquid and gas transmission pipeline controllers are re-directing flow, starting and stopping pipeline segments or adjusting flow rates to accommodate market conditions, maintenance activity and weather on a regional or sometimes national basis. For these types of pipelines, dynamic operating conditions require controllers to have a high level of knowledge, skills and abilities to safely maintain systems and promptly recognize operating anomalies and abnormal conditions as they develop.

Although the formal pilot program will place an emphasis on gas transmission and hazardous liquid pipelines, OPS will be able to address all of the following groups in the context of the project report and recommendations:

• Gas transmission pipeline controllers.

• Hazardous liquid pipeline controllers.

• Pipeline controllers who reside in gas compressor and hazardous liquid pump stations.

• Pipeline controllers who reside in LNG facilities, to the extent they control pipelines.

• LDC pipeline controllers.

The work of this project will then include consideration for the qualification and potential need for certification processes related to this broader set of pipeline controller personnel. OPS acknowledges the differences in operating hydraulics and the role of controllers between hazardous liquid and natural gas pipelines, and will take these differences into consideration during the development of the project and the eventual recommendations.

Identification of the Focus Group

A Focus Group of stakeholders was established early in the project, including representatives of the public, industry trade associations, pipeline operators, state pipeline safety agencies, academia and OPS. Discussions with the Focus Group provided insight regarding key operational and logistic considerations for the project. Information came directly from the Focus Group participants and subsequently from members of their respective constituencies. In addition, project updates have been presented at several trade association meetings, where additional feedback was attained. OPS will continue to use the Focus Group throughout the term of the project.

Accident and Incident Review

Preliminary review of the NTSB incident/accident data indicates that more detailed information regarding a controller's functions could be collected as a part of accident and incident reporting, to permit a more definitive analysis of controller involvement. Such additional information would support a more thorough review in future analysis. There are many other events for which reporting is not mandated by current regulations, such as upset conditions, near-miss events, situations that were averted by the operation of safety systems and other operating anomalies that did not reach current reportable thresholds. The tabulation and analysis of such events could provide additional information to support a more thorough controller performance review, metrics analysis, targeted or enhanced training and general pipeline safety and integrity improvements. This additional information could also be used to determine and/or substantiate the adequacy of current controller qualification programs.

Survey of Industry Practices

OPS met with a broad cross-section of pipeline operators in the fourth quarter of 2003 to learn what pipeline operators are currently doing to meet existing operator qualification requirements for controllers. OPS will be meeting with representatives of other industries, additional pipeline operators and research organizations during the course of the project to gather an expanded set of information that will help develop and substantiate the recommendations and conclusions of our report. The industry visits conducted to date are tabulated in the docket.

As a result of these visits, pipeline control functions have been categorized. Currently, principal control function categories are defined as: full remote control, detect/monitor/direct field operations, and detect/monitor/defer to field operations. In each case, controllers were using computers to detect and monitor operations and then either perform control functions themselves or direct or advise field operations of needed attention based on the controller's responsibility, authority and assessment of the situation. These control function categories were developed to more clearly separate operators into controller function groups.

Participation in B31Q (National Consensus Standard on Pipeline Personnel Qualification)

OPS recognizes the ongoing effort to develop a more thorough, consensus-based standard for gas and hazardous liquid pipeline personnel qualification programs. The American Society of Mechanical Engineers (ASME) is now engaged in the development of a national consensus standard entitled ASME B31Q, ''Pipeline Personnel Qualification Standard.'' It is anticipated that this standard will include qualification requirements for pipeline controllers who are performing tasks influencing pipeline safety or integrity. It will also incorporate a set of management practices intended to ensure that personnel qualifications will be maintained so that they remain current, and consistent with tasks performed. The completion of ASME B31Q is imminent. Should ASME B31Q be completed within the time frame of the Controller Certification project, there may be an opportunity to select one or more operators to demonstrate and test applicable elements of the B31Q's controller-related qualification requirements during the pilot program.

Investigation of Controllers' Interaction with Computers

This project will also examine the interface and data presentation characteristics of the computer systems that controllers use to operate pipelines. This work will be supplemented by reviews of other industrial control room settings. PHMSA/OPS acknowledges that this area is beyond traditional personnel qualifications, but has identified that this areas should be addressed as an aspect of the Congressional recommendations and report due at the conclusion of this project. A review of the adequacy and presentation of data through the computer system will be limited to those areas that may affect the controller's ability to accurately recognize and promptly react to abnormal operating conditions, or those other conditions that may lead to abnormal operating conditions. Specific areas of interest are not necessarily limited to:

1. Access to sufficient pipeline system information.
2. Accuracy of the information provided.
3. Color pallet and number of colors used to convey information.
4. Interaction and navigation within the control system displays.
5. Initiation of controller commands.
6. Security from unauthorized commands and control.
7. Alarm and event configuration and management.
8. Recognition of control system degradation.
9. Alternative means of system monitoring and control in times of system failures.
10. The conditions surrounding the testing of alternative means of system monitoring and control.

Pilot Program

The PSIA directs that three operators be selected to formally participate in the pilot program. The pilot program will be conducted from the 2nd quarter of 2005 through the 1st quarter of 2006. Information gathered during the industry survey indicated that many local distribution company controllers advise and defer action to district field operations personnel for needed control adjustments. Therefore, the pilot program will focus on hazardous liquid and gas transmission pipelines, and will not include an operator who is solely a local distribution company. In addition to the three formal pilot participants, additional operators of all types will be contacted informally to provide supplemental information on practices, processes, procedures and standards that are used, or could be used to demonstrate controller qualification thoroughness and effectiveness. The similarity of some controller function across all operator types will allow certain portions of the report and recommendations to address all pipeline operators.

The purpose of the Pilot Program is to: (1) Evaluate the effectiveness of the practices and administrative processes currently used by operators in the qualification of controllers; (2) review training programs, qualification requirements, evaluation methods, evaluation criteria, success thresholds, and re-evaluation intervals to determine their adequacy and thoroughness in the controller qualification process; and (3) explore how these processes and evaluation criteria could be used to develop uniform protocols and acceptance criteria for the certification of pipeline operators' controller qualification processes. The pilot program will be used to examine and evaluate:

1. Operators' procedures and practices for Operator Qualification (OQ) regulations for pipeline controllers, including evaluation practices and frequency, and other regulatory requirements.
2. Methods and metrics employed to measure and document ongoing individual controller performance.
3. Operator studies or research (past or present) related to controller qualifications, performance metrics or other related topics.
4. Measures in place to monitor individual controller performance between formal periodic evaluations.
5. Benefits anticipated from voluntary candidate changes or enhancements to controller qualifications requirements.
6. Administrative processes used to pre-screen potential controllers, processes to suspend, revoke and restore a controller's job assignment, and documentation to substantiate ongoing qualification adequacy.

OPS invites pipeline operators to volunteer to participate in the pilot program. Participation of pilot program operators will include on-site observation by OPS representatives as further described in this notice, and will also include discussions regarding the development of project recommendations. Operators wishing to participate in the pilot must submit descriptions of the controller qualification processes and systems they are using to validate the training and proficiency of their controllers. Operators may also include a brief description of any new techniques that

they may wish to initiate and evaluate during the course of the pilots. OPS will review candidate submissions to determine which three best serve the objectives of the project. Operators wishing to participate in the pilot program must submit information outlining the systems and processes used in their controller qualification program by May 16, 2005. Details outlining the submittal process are further explained in this document and in the docket.

During the pilot program period, OPS will monitor and evaluate programs of the selected pilot operators to determine the value that specific practices would add to an adequate qualification program, and possibly a certification process. The pilot program will not include operator qualification inspections of the pilot operators. OPS will have an active dialog with the pilot operators on an ongoing basis, review preliminary pilot findings with each pilot operator, and seek their additional input before developing conclusions and recommendations for the final report to Congress. Estimates of maximum operator man-hour requirements for the pilots are included in the docket.

OPS will also be studying research findings and will review existing qualification and certification processes that are employed or have been considered for aircraft pilots, aviation flight controllers railroad engineers and train dispatchers. Other industries where requirements and operating practices have similarities to pipeline controllers may also be identified and reviewed.

In conjunction with the pilot program, the overall project team will review recent incident and accident data to assure that the activities of the pilot program and subsequent recommendations include recognition of lessons learned from those events that may have been attributed to, or aggravated by, controller involvement or lack of action. This review will encompass a review of OPS records and NTSB reports and recommendations. Control room personnel evaluation, administration, certification and performance monitoring practices employed for Federal Aviation Administration (FAA) Air Traffic Controllers and Federal Railroad Administration (FRA) Rail System operations will also be studied.

As required by PSIA, the resulting recommendations and other criteria will be prepared as a final report and submitted to Congress in December 2006. The report will focus on pipeline operators' administrative and procedural processes that are, or could be, employed to provide an elevated assurance that controllers possess adequate knowledge, skills and abilities. The report may conclude that existing or pending regulations and/or industry standards are adequate to ensure qualified controllers, or that current regulations and/or industry standards are not sufficient and additional measures are needed. The report may also conclude that further study should be applied in certain topical areas.

OPS will summarize the pilot results, merge other project findings into the project report, and submit the report to Congress by December 17, 2006, as required by the PSIA.

The docket provides additional information regarding the pilot program. Candidate pilot operators must be regulated under 49 CFR parts 192 and/or 195. A data form has been developed to assist candidate operators in providing sufficient information to OPS regarding pilot operator volunteers; this form is available in the docket.

Authority: 49 U.S.C. 60102, 60109, 60117.

Issued in Washington, DC on April 11, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–7638 Filed 4–12–05; 4:27 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–295 (Sub–No. 6X)]

The Indiana Rail Road Company—Abandonment Exemption—in Monroe County, IN

The Indiana Rail Road Company (INRD) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.44-mile portion of its Ellettsville Branch from milepost Q216.13 near Loesch Road to the end of the line at Ellettsville, milepost Q213.69, in Monroe County, IN. The line traverses United States Postal Service ZIP Codes 47404 and 47429.

INRD has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 17, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 25, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 5, 2005, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to INRD's representative: John Broadley, John H. Broadley & Associates, P.C., 1054 31st Street, NW., Suite 200, Washington, DC 20007.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

INRD has filed an environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 22, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), INRD shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by INRD's filing of a notice of consummation by April 15, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 6, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–7487 Filed 4–14–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before June 14, 2005.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- (202) 927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, and form and OMB numbers (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collections and their instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms:

Title: Claim—Alcohol, Tobacco and Firearms Taxes.

OMB Number: 1513–0030.

TTB Form Number: 5620.8.

Abstract: This form is used, along with other supporting documents, to obtain credit, remission, and allowance of tax on taxable articles (alcohol, beer, tobacco products, firearms, and ammunition) that have been lost and to obtain refund of overpaid taxes and abatement of over assessed taxes.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Total Annual Burden Hours: 10,000.

Title: Report of Wine Premises Operations.

OMB Number: 1513–0053.

TTB Form Number: 5120.17.

Abstract: TTB collects this information in order to monitor activities at bonded wine premises. Information on production, removals, and raw materials used is analyzed to ensure compliance with tax and consumer protection laws enforced by TTB. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,755.

Estimated Total Annual Burden Hours: 10,642.

Title: Tobacco Bond—Surety (formerly Corporate Surety Bond—Tobacco Products and Cigarette Papers and Tubes), and Tobacco Bond—Collateral (formerly Collateral Bond—Tobacco Products and Cigarette Papers and Tubes).

OMB Number: 1513–0103.

TTB Form Numbers: 5200.24 (formerly 5220.5) and 5200.25 (formerly 5210.13), respectively.

Abstract: TTB requires a corporate surety bond or a collateral bond to ensure payment of the excise tax on tobacco products and cigarette papers and tubes removed from the factory or warehouse. These TTB forms identify the agreement to pay and the persons from which TTB will attempt to collect any unpaid excise tax. Manufactures of tobacco products or cigarette papers and tubes and proprietors of export warehouses, along with corporate sureties if applicable, are the respondents for these TTB forms. These forms are filed with collateral sufficient to cover the excise tax on tobacco products and cigarette papers and tubes.

Current Actions: There are changes to this information collection and it is

being submitted as an extension of a revised, currently approved collection.

Type of Review: Revision and extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 15.

Estimated Total Annual Burden Hours: 25.

Dated: April 11, 2005.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 05–7581 Filed 4–14–05; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register

Vol. 70, No. 72

Friday, April 15, 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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51447; File No. SR–ISE–2004–28]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Relating to Trading Options on Full and Reduced Values of the ISE 250 Index, the ISE 100 Index and the ISE 50 Index, Including Long-Term Options

Correction

In notice document 05–6743 beginning on page 17484 in the issue of Wednesday, April 6, 2005 make the following correction:

On page 17484, in the first column, the docket number is corrected to read as set forth above.

[FR Doc. C5–6743 Filed 4–14–05; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51458; File No. SR–NSCC–2004–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Establish a Comprehensive Standard of Care and Limitation of Liability to its Members

Correction

In notice document E5–1566 beginning on page 17494 in the issue of Wednesday, April 6, 2005 make the following correction:

On page 17495, in the third column, in the 21st line, ''April 26, 2005'' should read ''April 27, 2005''.

[FR Doc. Z5–1566 Filed 4–14–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
April 15, 2005

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Coke Oven Batteries; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0051; FRL–7895–8]

RIN 2060–AJ96

National Emission Standards for Coke Oven Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On October 27, 1993 (58 FR 57898), pursuant to section 112 of the Clean Air Act (CAA), the EPA issued technology-based national emission standards to control hazardous air pollutants (HAP) emitted by coke oven batteries. This action amends the standards to address residual risks under section 112(f) and the 8-year review requirements of section 112(d)(6).

DATES: The final rule amendments will be effective on April 15, 2005. Existing sources will be required to comply with the final rule as amended on July 14, 2005. The incorporation by reference of certain publications listed in the final rule amendments is approved by the Director of the Federal Register as of April 15, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2003–0051. 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.,* confidential business information or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, Docket ID No. OAR–2003–0051, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Schell, Emission Standards Division (C439–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–4116, e-mail address: *schell.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code[1]	Examples of regulated entities
Industry	331111 324199	Existing by-product coke oven batteries subject to emission limitations in 40 CFR 63.302(a)(2) and nonrecovery coke oven batteries subject to new source emission limitations in 40 CFR 63.303(b). These batteries are subject to maximum achievable control technology (MACT) requirements and are known as ''MACT track'' batteries.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.300 of the national emission standards for coke oven batteries. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 14, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Final Rule Amendments
A. What Are the Affected Sources and Emissions Points?
B. What Are the Requirements?
III. Response to Major Comments
A. Comments on the Overall Risk Program and Policy
B. Risk Comments Specific to Coke Ovens
C. Comments on Section 112(d)(6) Review Policy
D. Specific Comments on Section 112(d)(6) Review of Coke Ovens
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

EPA promulgated national emission standards for charging, door leaks, and topside leaks from coke ovens batteries at 58 FR 57898, October 27, 1993 (40 CFR part 63, subpart L) under section 112(d) of the CAA. Section 112(f)(2) of the CAA requires EPA to determine for each section 112(d) source category if the promulgation of additional standards is required ''in order to provide an ample margin of safety to protect public health.'' We also have

discretion to impose a more stringent emissions standard to prevent adverse environmental effect if such action is justified in light of costs, energy, safety, and other relevant factors. On August 9, 2004 (69 FR 48338), we proposed amendments to the national emission standards for coke oven batteries that included more stringent requirements for certain by-product coke oven batteries to address health risks remaining after implementation of the 1993 national emission standards. The proposed amendments also included provisions pursuant to the 8-year review requirements of CAA section 112(d)(6).

In our proposal preamble, we presented the maximum individual risk (MIR) estimate for coke oven emissions from those emission points subject to the 1993 national emission standards. The MIR estimate was 200 in a million (69 FR 48346). We also explained at proposal that, as required under the Benzene NESHAP [1] decision framework (codified in section 112(f)(2)(A) and (B)), we considered the level of risk from the limits in the 1993 national emission standards (*i.e.*, 200 in a million) to be acceptable after considering several factors (69 FR 48347–48350). These factors included the number of exposed people with cancer risk level estimates greater than 1 in a million (approximately 300,000 people or 7 percent of the exposed population), the number of people for whom cancer risk levels are greater than 100 in a million (less than 10 people), the estimate of annual incidence of cancer (0.04), and the projected absence of adverse noncancer effects.[2] Also considered in the evaluation in the proposal was the protective nature of many of the assumptions leading to these estimates of potential residual risk.

Under section 112(o)(7) of the CAA, we are required to issue revised cancer guidelines prior to the promulgation of the first residual risk rule under section 112(f) (an implication being that we should consider these revisions in the various residual risk rules). Since our August 2004 proposal, we have issued revised cancer guidelines and also supplemental guidance which deal specifically with assessing the potential added susceptibility from early-life exposure to carcinogens. We have considered our decisions in these final rule amendments in light of the revised cancer guidelines and supplemental guidance. The supplemental guidance provides an approach for adjusting risk estimates to incorporate the potential for increased risk due to early-life exposures to chemicals that are thought to be carcinogenic by a mutagenic mode of action. For these chemicals, the supplemental guidance indicates that, in lieu of chemical-specific data on which age or life-stage specific risk estimates or potencies can be determined, default ''age dependent adjustment factors'' can be applied when assessing cancer risk for early-life exposures to chemicals which cause cancer through a mutagenic mode. In light of this guidance, EPA has evaluated the available scientific information associated with pollutants emitted by coke ovens and believes it is appropriate to apply the default factors in the risk assessment supporting today's final rule amendments. The chief HAP emitted by coke ovens, coke oven emissions, is specifically enumerated in CAA section 112(b)(1). Coke oven emissions are likely to cause cancer through a mutagenic mode of action. We base this conclusion on the data on coke oven emissions mutagenicity which has been summarized by EPA[3] [4] and the International Agency for Research on Cancer,[5] and reported in numerous, more recent studies available in the peer-reviewed literature. The result of that determination is that our individual and population cancer risk estimates for lifetime exposures that begin at birth and extend through adulthood will increase from proposal by a factor of 1.6,[6] a factor that considers the assumption of constant exposure over the 70-year exposure duration (birth to adulthood) we used in estimating individual and population risk. These further assumptions of increased cancer potency and birth to 70-year residence of the entire population in the area assessed were not part of the proposed rule amendments.

Based on the supplemental guidance, we have revised our risk estimates by applying the default adjustment factors to account for increased susceptibility that might occur due to exposures that occur from birth to 16 years of age. The increased risk due to consideration of the exposures assumed to occur from birth to 16 years of age (included in the 70-year total exposure duration) results in a revised upper-bound estimate. For the source category associated with the 1993 national emission standards, the revised MIR estimate is 300 in a million. We have chosen to also apply the default adjustment to other analyses used to support the determination that the MIR of 200 in a million was acceptable. However, we acknowledge that more refined modeling of exposure would be necessary to adequately express the effect of early life susceptibility to overall estimates of population risk. For example, not all individuals are expected to be born in the area assessed. Nonetheless, after application of the default adjustment factor, our conclusions in the proposed rule amendments do not change and further refinement of the assessment was not warranted. The assumptions of exposure initiation (at birth for all) and cancer risk for coke oven emissions based on the application of the supplemental guidance would affect the number of exposed people with cancer risk levels greater than 1 in a million (500,000 people or 12 percent of the exposed population), the number of people exposed to risk levels greater than 100 in a million (approximately 70 people), the annual incidence of cancer (0.06), and the uncertainty associated

[1] National Emission Standard for Hazardous Air Pollutants (NESHAP): Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Stryene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (54 FR 38044, September 14, 1989).

[2] All estimates of population risk and estimated annual incidence in these final rule amendments are based on an upper-bound cancer unit risk estimate, a 70-year exposure duration, and our best estimates of exposure concentrations; cancer risk estimates using best estimates for exposure duration and unit cancer risk would yield lower risk estimates.

[3] Carcinogen Assessment of Coke Oven Emissions: Final Report. U.S. Environmental Protection Agency, Office of Health and Environmental Assessment. EPA–600/6–82–003F. February 1984.

[4] ''Coke Oven Emissions.'' U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS). 1989. Available at: *http://www.epa.gov/irissubst/0395.htm.*

[5] IARC Monographs Supplement 7. International Agency for Research on Cancer. 1987, page 176. Available at: *http://www-cie.iarc.fr/htdocs/monographs/suppl7/coke production.html.*

[6] The ''Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens' recommends applying default adjustment factors to early life stage exposures to carcinogens acting through a mutagenic mode of action. The Supplemental Guidance recommends an integrative approach that can be used to assess total lifetime risk resulting from lifetime or less-than-lifetime exposure during a specific portion of a lifetime. The following adjustments represent the approach suggested in the Supplemental Guidance: (1) For exposures before 2 years of age (*i.e.*, spanning a 2-year time interval from the first day of birth up until a child's second birthday), a 10-fold adjustment; (2) for exposures between 2 and less than 16 years of age (*i.e.*, spanning a 14-year time interval from a child's second birthday up until their sixteenth birthday), a 3-fold adjustment; and (3) for exposures after turning 16 years of age, no adjustment. In applying this factor to population risk, risk bins shown in appendix I of the risk assessment document were multiplied by 1.6, and the populations associated with those new risk bins were recounted depending on whether the bin risks were greater than 1 in a million, 10 in a million, or 100 in a million. The cancer incidence value was directly multiplied by the 1.6 factor. The analysis and more detailed calculations may be found in the docket for this rulemaking.

with the estimates of risk. The remaining factors we considered (*e.g.*, actual emissions versus allowable emissions and the projected absence of adverse noncancer effects) are unaffected.

Although we are adjusting risk estimates upward to reflect the new supplemental guidance, these estimated risk increases must also be tempered by consideration of other factors that were discussed at proposal and in the risk assessment document, and the further protective assumption added to the risk assessment that all individuals are born in the assessed area. For example, the coke oven battery sources are consistently controlling emissions below the level allowed by the 1993 national emission standards, which results in a 30 percent reduction in the estimated MIR. Our 70-year exposure assumption includes exposures from birth to 70 years. If exposures were from 3 years to 73 years, the adjustment factor would be less than 1.6. If exposures were from 16 years to 86 years, no adjustment would be necessary. In addition, we used a health-protective assumption of a 70-year exposure duration in our risk estimates; however, using the national average residency time of 12 years would reduce the estimate of risk by a factor of six (69 FR 48347). Our 1984 unit risk estimate (URE) for coke oven emissions is considered a plausible upper-bound estimate; actual potency is likely to be lower. After considering all of these factors, we continue to consider the MIR due to emissions at the limits in the 1993 national emission standards to be an acceptable level of risk (within the meaning of the Benzene NESHAP decision framework discussed at 69 FR 48339–48340, 48347–48348). As mentioned in the recently published cancer guidelines, we will continue to develop and present, to the extent practicable, an appropriate central estimate and appropriate lower and upper-bound estimates of cancer potency. Development of new methods or estimates is a process that will require independent peer review.

We also re-examined our decision as to what level of control is necessary to provide an ample margin of safety to protect human health in light of applying the early-life exposure default adjustment factors. The 2010 lowest achievable emission rate (LAER) levels (which we are adopting as residual risk standards in today's action) will reduce the MIR from exposure to coke oven emissions to 270 in a million. In addition, the reductions will result in approximately 200,000 fewer people having excess lifetime cancer risks of greater than 1 in a million from exposure to these emissions. After considering these estimates and the other factors explained in detail in the preamble to the proposed rule amendments, we continue to believe that the 2010 LAER levels provide an ample margin of safety to protect public health.

The proposal allowed a 60-day comment period ending October 8, 2004. The EPA's EDOCKET system logged a total of 16 public comments in Docket Number OAR–2003–0051. Commenters included one state association, two state agencies, a coalition of three major environmental groups, 9 industry trade associations, one steel company, and two individual commenters. Each of their comments is summarized in our response to comments document contained in the rulemaking docket.

II. Summary of the Final Rule Amendments

A. What Are the Affected Sources and Emission Points?

The affected sources are each coke oven battery subject to the emission limitations in 40 CFR 63.302 or 40 CFR 63.303 (the 1993 national emission standards). There are five affected sources in this category: Four existing by-product recovery batteries and one nonrecovery battery. The final rule amendments apply to emissions from doors, topside port lids, offtake systems, and charging on existing by-product coke oven batteries. Provisions are also included for emissions from doors on new and existing nonrecovery batteries and charging on new nonrecovery batteries.

B. What Are the Requirements?

For existing by-product batteries, the final rule amendments limit visible emissions from coke oven doors to 4 percent leaking doors for tall batteries and for batteries owned or operated by a foundry coke producer. Short batteries are limited to 3.3 percent leaking doors. Visible emissions from other emission points are limited to 0.4 percent leaking topside port lids and 2.5 percent leaking offtake systems. No change has been made to the limit for charging—emissions must not exceed 12 seconds of visible emissions per charge. Each of these visible emission limits is based on a 30-day rolling average. The final rule amendments replace the less stringent limits that became effective on January 1, 2003, for MACT track batteries and are equivalent to the limits that will become effective on January 1, 2010, for batteries subject to LAER track requirements. We have not changed the standards for new by-product batteries.

The monitoring, reporting, and recordkeeping requirements in the existing national emission standards continue to apply to existing by-product coke oven batteries on the MACT track. These requirements include daily performance tests to determine compliance with the visible emission limits. Each performance test must be conducted by a visible emissions observer certified according to the test method requirements. A daily inspection of the collecting main for leaks is also required. Specific work practice standards must also be implemented if required by the provisions in 40 CFR 63.306(c). Under the existing standards, companies must make semiannual compliance certifications; report any uncontrolled venting episodes or startup, shutdown, or malfunction events; and keep records of information needed to demonstrate compliance.

We are also issuing amendments for the improved control of charging emissions from a new nonrecovery battery (*i.e.*, constructed or reconstructed on or after August 9, 2004). Fugitive charging emissions are subject to an opacity limit of 20 percent. A weekly performance test is required to determine the average opacity of five consecutive charges for each charging emissions capture system. The certified observer must determine and record the highest 3-minute average opacity for each charge; compliance is based on the average of the highest 3-minute averages for five consecutive charges. Emissions of particulate matter (PM), a surrogate for particulate HAP in coke oven emissions, from a charging emissions control device are limited to 0.0081 pounds per ton (lb/ton) of dry coal charged. A performance test using EPA Method 5 (40 CFR part 60, appendix A) is required to demonstrate initial compliance with subsequent performance tests at least once during each title V permit term. If any visible emissions are observed from a charging emissions control device, the owner or operator is required to take corrective action and follow up with a visible emissions observation by EPA Method 9 (40 CFR part 60, appendix A) to ensure that the corrective action had been successful. Any Method 9 observation of the charging emissions control device greater than 10 percent opacity must be reported as a deviation in the semiannual compliance report. The final rule amendments also require the owner or operator to implement a work practice standard designed to ensure

that the draft on the oven is maximized during charging.

We are also promulgating a work practice standard for the control of door leaks from all nonrecovery coke oven batteries on the MACT track. The owner or operator is required to observe each coke oven door after each charge and record the oven number of any door from which visible emissions occur. If a coke oven door leak is observed at any time during the coking cycle, the owner or operator must take corrective action and stop the leak within 15 minutes from the time the leak is first observed. After a door leak has been stopped, no additional leaks are allowed from doors on that oven for the remainder of that oven's coking cycle.

We are allowing an exception to the 15-minute limit period for stopping a door leak. The owner or operator may have up to 45 minutes to stop a door leak no more than twice per battery during any semiannual reporting period. The limit of two occurrences does not apply if a worker must enter a cokeside shed to stop a leaking door under a cokeside shed. In that case, the owner or operator may have up to 45 minutes to take corrective action and stop the leak. The owner or operator also must operate the evacuation system and control device for the cokeside shed at all times that there is a leaking door under the cokeside shed.

The owner or operator of a nonrecovery battery is also required to identify malfunctions that might cause a door to leak, establish preventative measures, and specify types of corrective actions for such events in its startup, shutdown, and malfunction plan. The final rule amendments also include recordkeeping and reporting requirements necessary to demonstrate initial and continuous compliance.

We are also amending the provision in 40 CFR 63.303(a)(2) for existing nonrecovery batteries to state that the work practice standard for charging also applies to new nonrecovery batteries. These work practices are described in 40 CFR 63.306(b)(6).

We are requiring that the owner or operator of existing by-product coke oven batteries on the MACT track comply by July 14, 2005. See CAA section 112(f)(4)(A), which states that existing sources must comply with section 112(f) residual risk standards within 90 days of the standard's effective date. We are also requiring that nonrecovery coke oven batteries on the MACT track comply by July 14, 2005 (or upon startup for a new nonrecovery battery for which construction commenced after August 9, 2004).

The basis for the final rule amendments is set out in the preamble to the proposed rule amendments (69 FR 48338) unless otherwise explained in our responses to the major comments in this preamble. Our responses to all the comments are included in the docket.

III. Response to Major Comments

A. Comments on the Overall Risk Program and Policy

1. Ample Margin of Safety

Comment: One commenter argued that CAA section 112(f)(2) makes clear that EPA's residual risk standards must reduce the lifetime risk to the single individual most exposed to emissions from any one of these sources to less than 1 in a million. In contrast, another commenter stated that EPA has properly construed the statute as establishing a trigger under which EPA must undertake a residual risk determination but not as establishing the level of risk reduction that must be achieved and further stated that EPA is not required to provide protection that achieves the 1 in a million excess cancer risk level.

Response: The commenter's argument that the statute requires section 112(f) residual risk standards to reduce cancer risk to a most exposed individual to less than 1 in a million lacks a basis in the statutory text or in policy. Section 112(f)(2)(A) does indeed require us to promulgate standards if the ''lifetime excess cancer risk to the individual most exposed to emissions from a source in a category or subcategory'' is greater than 1 in a million. It does not establish what the level of the standard might be. See ''A Legislative History of the Clean Air Act Amendments of 1990,'' page 1789 (Conference Report), stating that ''[s]ection 112(f) contains a trigger for standards for non-threshold pollutants. * * *'' Rather, the level of the standard is to ''provide an ample margin of safety'' to protect public health. ''Ample margin of safety'' is to be interpreted under the two-step formulation established by the Benzene NESHAP and CAA section 112(f)(2)(B).

Under that formulation, there is no single risk level establishing what constitutes an ample margin of safety (69 FR 48348). Rather, the Benzene NESHAP approach codified in section 112(f)(2) is deliberately flexible, requiring consideration of a range of factors (among them estimates of quantitative risk, incidence, and numbers of exposed persons within various risk ranges; scientific uncertainties; and weight of evidence) when determining acceptability of risk (the first step in the ample margin of safety determination) (54 FR 38045). Determination of ample margin of safety, the second step of the process, requires further consideration of these factors, plus consideration of technical feasibility, cost, economic impact, and other factors (54 FR 38046). As we stated in our ''Residual Risk Report to Congress'' [7] issued under CAA section 112(f)(1), we do not consider the 1 in a million individual additional cancer risk level as a ''bright line'' mandated level of protection for establishing residual risk standards, but rather as a trigger point to evaluate whether additional reductions are necessary to provide an ample margin of safety to protect public health. This interpretation is supported by the interpretive language in the preamble to the Benzene NESHAP, which was incorporated by Congress in section 112(f)(2)(B).

We consequently believe that the commenter's bright line approach is not supported by the statute. Indeed, it is likely incorrect as a matter of law.[8] In any event, EPA has concluded that the flexible approach to risk acceptability and ample margin of safety set forth in the Benzene NESHAP is desirable in light of the complex judgments EPA will make under section 112(f). The commenter's rigid approach lacks a basis in sound policy as well.

Comment: Two commenters contended that EPA rejected a more stringent standard because the control technologies were not available at a reasonable cost. The commenters maintained that the more stringent standard would reduce risks to an acceptable level, and that the EPA does not have statutory authority to consider costs. According to one commenter, section 112(f) clearly calls for costs to be considered only in the area of adverse environmental effects.

In contrast, a third commenter stated that EPA should not require any further reductions unless those reductions will produce discernible results stating that EPA justified the proposed additional reductions based on costs, yet noted that the reduction in cancer risk was so

[7] Residual Risk Report to Congress. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. EPA–453/R–99–001. March 1999.

[8] It is true that the Senate version of CAA section 112(f) mandated elimination of lifetime risks of carcinogenic effects greater than 1 in 10 thousand to the individual in the population most exposed to emissions of a carcinogen. (See ''A Legislative History of the Clean Air Act Amendments of 1990,'' pages 7598 and 8518.) However, this version of the legislation was not adopted. The EPA believes that the (rejected) Senate version of section 112(f) shows that Congress was capable of mandating a level of risk reduction had it wished to do so.

small that it was within the noise level of EPA's ability to estimate. The commenter did not believe it was good policy to require additional reductions if EPA cannot be sure they will result in any benefit.

Response: The first two commenters are mistaken regarding the consideration of costs in determining ''ample margin of safety.'' While it is correct that EPA does not consider costs in the first step (the ''acceptability'' determination) of the ample margin of safety determination, costs are a factor which must be considered in the second step of the process (54 FR 38046).[9] We have considered costs here in the authorized and required manner in assessing ample margin of safety after determining if baseline risk (level of risk remaining after imposition of MACT) is acceptable (54 FR 38045; 69 FR 48348–48349).

In establishing an ample margin of safety, we weigh a range of factors, allowing flexibility on what constitutes an ample margin of safety (69 FR 48348). Some of the factors that can be considered are estimates of individual risk, incidence, numbers of exposed persons within various risk ranges, scientific uncertainties, weight of evidence, as well as potential standards' technical feasibility, cost, and economic impact. Balancing the above factors with the ability to achieve meaningful risk reductions is a critical component of the residual risk rulemaking process.

We do not agree with the other commenter that the standards fail to produce discernible results. The emission limits are more stringent than the current MACT standards. The emissions reductions can be achieved at a nominal cost, they are technically feasible, and we estimate that the reductions will ensure that approximately 200,000 fewer people having excess lifetime cancer risks of greater than 1 in a million.

2. Co-Located Sources and Facilitywide Risk

Comment: One commenter said that many coke plants are part of a larger steel production complex; consequently, EPA should have considered the combined risk of all emission sources at the facility, including pushing, quenching, and battery stacks. The commenter also asserted that EPA should have considered the impact on residents near plants that are located in the same area (*e.g.*, East Chicago and Gary, IN) and that the legislative history shows Congress' intent that EPA consider the combined risks of all sources of HAP emissions, regardless of source category, that are co-located. Specifically, Congress intended that the residual risk standards be stringent enough:

> so that when all residual risk standards have been set, the public will be protected with an ample margin of safety from the combined emissions of all sources within a major source.[10]

The commenter disagreed with EPA's statement that delaying a full assessment of risk was a practical necessity because of the lack of information on actual emissions from pushing, quenching, and battery stacks. The commenter argued, essentially, that we are obligated to develop standards for the totality of risks simultaneously.

Another commenter also stated that EPA should consider the facility as a whole and requested stringent controls on each source category to ensure the goals of the residual risk provisions are met in an expeditious manner. The commenter also asked that EPA ensure health protection in cases where there are multiple facilities in close proximity.

Three commenters voiced opposition to consideration of emissions other than those from the specific source category at issue. One commenter indicated that the initial trigger for determining whether a residual risk standard was required at all must be applied only to a particular ''category or subcategory of sources'' (quoting CAA section 112(f)(2)(A)). The commenter argued that the provision in section 112(f)(2)(A) requiring us to develop residual risk standards if risks from the source category exceed a certain level also serves as a limitation in that ''residual risk determinations are to be done on a category or subcategory basis, not on a source or facilitywide basis.'' The commenter concluded that facilitywide risk could not be considered at all when establishing residual risk standards. According to this commenter, the only exception to a source category approach would be a voluntary request for a facilitywide determination so that they could use the most cost-effective set of reductions.

Another commenter maintained that residual risk determinations for facilities as a whole would be acceptable only if EPA were to do so on a source category-by-source category basis. This commenter continued that if EPA were to adopt that approach, then the Agency cannot impose more risk reduction requirements on one source category to compensate for risks posed by another (co-located) source category.

Another commenter argued that statutory language prevents consideration of risks posed by anything but the source category at issue, and further argued that any other approach would be difficult and confusing to implement. The commenter asserted that although EPA can consider facilitywide risk, residual risk standards should not be applied disproportionately to the first of the co-located sources evaluated in the residual risk process.

Three commenters disagreed with EPA's use of Senator Durenburger's statement as the basis for the Agency's ''facilitywide'' interpretation of the statute. One commenter contended that the statement of one Senator cannot overcome the statutory language of section 112(f)(2) or the congressional directive to follow the Benzene NESHAP, particularly when the Senator noted that his remarks were not providing EPA specific new direction. Another commenter added that it was inappropriate to rely on the Senator's statements because the Conference Committee Joint Explanatory Statement suggests that the Senate and House Managers did not agree to much with respect to the Senate bill, and the Conference Report contains no explanation of section 112(f) on which EPA can rely for support.

One commenter stated that a facilitywide approach would be bad policy because it would constrain the ample margin of safety for individual source categories beyond the level intended in the Benzene NESHAP framework. Trying to reconcile aggregated risk from dissimilar sources that may be geographically far apart may be difficult to accomplish and may not identify better opportunities for emission reductions (than would serial analyses for individual source categories). The commenter also stated that Congress directed EPA to establish a list of source categories and was well aware that many plants would have emission units falling into more than one category. Congress also anticipated that standards under section 112(d) and (f) would be staggered over time. The commenter contended that a facilitywide analysis could be too complex, speculative, and costly for other residual risk standards; therefore, EPA cannot and should not mandate facilitywide analyses in standards under section 112(f).

Response: First, we should clarify the scope of the issue. Some discussion of

[9] See also the *Vinyl Chloride* opinion at 824 F.2d 1146.

[10] Floor Statement of Senator Durenberger in ''A Legislative History of the Clean Air Act Amendments of 1990'', vol. 1, page 868 (Senate Debate on Conference Report).

this issue has used loose terminology (*i.e.*, ''facilitywide,'' ''co-located,'' ''background'') as an imprecise shorthand for the various pollutant sources to which an individual could be exposed. In fact, there is a continuum of possible sources of exposure to consider. One could consider, in the initial assessment of residual risk from a source category, exposure from: (1) The individual emission points regulated under the standards being evaluated—here, charging, doors, lids, and offtakes—excluding all other sources, including nearby sources in the same category; (2) emissions from the source category only, but including co-located sources in the same category; (3) emission points at a facility that are necessarily co-located because they are part of an integrated common activity (*e.g.* pushing, quenching, and battery stacks for coke ovens); (4) all emissions at a facility (*i.e.*, a stationary source or group of sources in any source category in a contiguous area under common control); (5) emissions from similar (or all) nearby facilities (''closely-located'' sources) whose emissions affect all or some of the same individuals; or (6) all ambient HAP, regardless of their source (*e.g.*, automobiles, HAP originating from global sources).[11]

After considering the statute and the divergent views of commenters on these topics, EPA agrees with those commenters who stated that the natural reading of section 112(f) is that EPA should evaluate risks posed by the emissions only from the category or subcategory. Section 112(f)(2)(A) instructs EPA to promulgate standards for ''each category or subcategory'' for which it has adopted MACT standards, if such standards are needed in order to provide an ample margin of safety to protect public health. The statutory ''trigger'' provision at the end of section 112(f)(2)(A), which mandates that EPA promulgate residual risk standards when ''cancer risks to the individual most exposed to emissions from a source in the category'' exceed a designated level, clearly is directed exclusively at emissions from the source category alone, and thus supports a reading that the ultimate requirement of the provision likewise applies only to emissions from the source category.[12]

We further agree, that while this is the first determination under section 112(f) since the adoption of the Clean Air Act Amendments of 1990, Congress intended that EPA continue to apply the same test for determining when public health is protected with an ample margin of safety that was in effect before those amendments. Section 112(f)(2)(B) instructs EPA to use the ample margin of safety decision framework adopted in the Benzene NESHAP to make section 112(f) residual risk determinations, and indeed states that:

> [n]othing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of this section, as * * * set forth in the **Federal Register** of September 14, 1989.

In the Benzene NESHAP, EPA interpreted and applied the two-step test drawn from the D.C. Circuit's *Vinyl Chloride* opinion. Under that approach, EPA must first determine what level is ''safe'' ''based exclusively upon the Administrator's determination of the risk to health from a particular emission level.'' (*See* 54 FR 38055 (quoting *Nat'l Res. Defense Council, Inc.* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (en banc)). The Court made clear, however, that ''safe'' does not mean ''risk free.'' *Id.* Rather, the EPA must ''determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live.'' *Id.* In the second step under *Vinyl Chloride* and the Benzene NESHAP, once an ''acceptable risk'' level is determined, EPA must decide whether additional reductions are necessary to provide ''an ample margin of safety'' (54 FR 38049). As part of this second decision, EPA may consider the costs of additional reductions, technological feasibility, uncertainties about available information or other relevant factors. *Id.*

After examining the statutory scheme, the Benzene NESHAP, and sound policy concerns, EPA has concluded that, in its assessment of ''acceptable risk'' for purposes of section 112(f), the agency will only consider the risk from emissions from that source category. This was the approach in the Benzene NESHAP, wherein EPA limited consideration of acceptability of risk to the specific sources under consideration (coke byproduct recovery plants, benzene storage vessels, benzene equipment leaks, ethylbenzene/styrene process vents, and maleic anhydride process vents) rather than to the accumulation of these and other sources of benzene emissions that may occur at an entire facility.[13] See, *e.g.*, 54 FR 38061 (stating in regard to consideration of natural background levels of a pollutant that ''considering other sources of risk from benzene exposure and determining the acceptable risk level for all exposures to benzene, EPA considers this inappropriate because only the risks associated with the emissions under consideration are relevant to the regulation being established and, consequently, the decision being made.'') The Agency also rejected approaches that would have mandated consideration of background levels of benzene in assessing acceptability of risk.[14]

EPA has concluded that the sound policy embodied in the Benzene NESHAP remains the approach that EPA should follow in determinations under section 112(f). At the first step, when determining ''acceptable risk,'' EPA will consider public health risks that result from emissions from the source category only. Not only is this interpretation supported by the text of the statute and prior regulatory practice, but we are impressed and daunted at the practical problems of implementing a compulsory facilitywide examination. For example, as commenters pointed out, in future rules, the myriad combinations of source categories present at different facilities could create situations where nationwide consideration of residual risk becomes a practical impossibility because every facility would present a different fact pattern of source categories. Yet section 112(f) contemplates national determinations, not case-by-case evaluations and standards.

[11] Of course, in all of these cases, EPA would limit consideration to HAP emissions that are either the same as those emitted by the sources under evaluation or that have the same health effect or affect the same target organ.

[12] Further, section 112(c)(9) authorizes EPA to delist a category or subcategory on the basis of specified risk criteria. This section does not require EPA to look beyond the relevant category or subcategory in making delisting decisions. It would be inconsistent for Congress to allow categories or subcategories to be delisted entirely from the section 112 regulatory program using a category specific analysis, yet require EPA to look beyond the same specific category when making similar risk assessments under section 112(f).

[13] EPA will consider, consistent with the Benzene NESHAP decision, whether co-location of entities within the same source category ''significantly influences the magnitude of the MIR or other risk levels'' (54 FR 38051). In this rulemaking, EPA has concluded that the health risks from the emissions at issue in this rulemaking are not affected (let alone significantly affected) by co-location with other entities in the same source category.

[14] EPA concluded that ''comparison of acceptable risk should not be associated with levels in polluted urban air'' (54 FR 38061). Background levels of certain HAPs can be relatively high, perhaps even above a level that might be considered ''safe.'' These background levels (including natural background) are not barred from EPA's analysis, but EPA will consider them along with other factors, such as cost and technical feasibility, in the second step of its 112(f) analysis. To decide otherwise, EPA would have to conclude—inconsistent with the Benzene NESHAP and sound policy—that 112(f) requires EPA to shut down any source that emits a HAP in an area with high background pollution, even if the emissions from that source are extremely small and do not appreciably affect overall risk.

At proposal, EPA cited a portion of a floor statement by Senator Durenberger as support for the position that EPA must assess the risk from an entire facility. EPA agrees with the commenters who stated that this statement is not sufficient evidence of Congressional intent to justify a different response than that adopted in the Benzene NESHAP, especially when, later in the same statement, the Senator states that section 112(f) is intended to be a ''return to current law'' under the Benzene NESHAP. (See Legislative History, Vol. 1 at 875–76.) As noted above, EPA did not adopt standards covering entire facilities in the Benzene NESHAP.

This said, EPA disagrees that section 112(f) precludes EPA from considering emissions other than those from the source category or subcategory entirely. EPA must still determine whether additional reductions should be required to protect public health with ''an ample margin of safety.'' EPA believes one of the ''other relevant factors'' that may be considered in this second step is co-location of other emission sources that augment the identified risks from the source category. The Benzene NESHAP does not explicitly identify this as a relevant factor under step two, but the decision does acknowledge that ''multiple exposures to chemicals are important to understand and consider in the EPA's overall implementation of its public health mandates' despite the fact that EPA has concluded that these risks should not be ''routinely evaluated and considered in selecting'' the level of acceptable risk (the first step of the Benzene analysis) (54 FR 38059).

The decision today is an example of a situation in which EPA has determined such a relevant factor merits evaluation. Each of the facilities subject to today's rulemaking is also subject to MACT emission standards on coke oven emissions from pushing, quenching, and battery stacks. These sources are *necessarily* co-located—they are integral parts of the same industrial activity. In this instance, EPA has the authority, in establishing ''an ample margin of safety,'' to impose greater reductions on a particular source category when the agency concludes that several of these co-located sources categories have elevated the overall public health risk to unacceptable levels.[15] While this evaluation could be performed during the development of an individual residual risk standard for any particular source category that is part of a larger facility with multiple source categories, such an analysis would necessarily require sufficient data regarding the total facility emissions and the costs and risk impacts of reducing those emissions. Such information may conceivably be available when EPA does the first residual risk rule applicable to a facility, but it is much more likely that an early evaluation of cross-category risks will be inconclusive due to a lack of complete information regarding other emission points. (In this rule, for example, EPA does not yet have an accurate quantification of pushing and quenching battery emissions reflecting these sources' operations under MACT standards; such information is needed to reasonably assess risks, costs, and further technologically feasible emission reductions.) EPA expects to develop better information about what cost-effective emission and risk reduction opportunities are available as more source categories are assessed. EPA believes, in the future, it may be able to identify potential emission reduction trade-offs between co-located source categories that result in more efficient risk reductions for less economic cost at a facility.

3. Actual Versus Allowable Emission Rates

We explained at proposal that we modeled emissions at the rates allowed by the 1993 national emission standards because they represent the source's potential emissions and risks and is, therefore, consistent with the language in CAA section 112(f)(2).

Comment: We received some comments that agreed with the use of allowable rather than actual emission rates while other comments stated that we should use actual emissions. According to one commenter, Congress meant for EPA to make realistic estimates of residual risk. In support, the commenter pointed to the language of section 112(f)(2) which refers to a different measure of risk (*i.e.*, risk to the ''individual most exposed to emissions from a source'' rather than ''maximum exposed individual'' or ''maximum individual risk'' used in the Benzene NESHAP) and associated passages in the legislative history. The commenter stated that EPA has data on actual emissions and should use this information as the basis for the risk assessment for coke ovens. Another commenter agreed with the decision to assume that sources are complying with the 1993 national emission standards when estimating emissions. The commenter also agreed with efforts to evaluate actual versus ''worst case'' potential emissions when estimating population risks and encouraged appropriate adjustments in future risk assessments. Another commenter stated that the use of maximum allowable emissions is particularly inappropriate for industrial source categories with batch operations because they consistently operate at levels well below the allowable rate.

One commenter stated that EPA should not assume perfect compliance with allowable emission limits since several of these facilities are out of compliance. The commenter believed that we must account for noncompliance in the emission estimates.

Response: EPA believes it may evaluate potential risk based on consideration of both actual and allowable emissions. This approach is both reasonable and consistent with the flexibility inherent in the Benzene NESHAP framework for assessing ample margin of safety. As a general matter, allowable emissions are the maximum level sources could actually emit and still comply with the national emission standards, so modeling this level of emissions is inherently reasonable for evaluating potential risks associated with current standards. As discussed in other sections of this preamble, coke oven battery sources are consistently controlling emissions below the level allowed by the 1993 national emission standards, which results in a 30 percent reduction in the estimated MIR.

It is also reasonable that we consider actual emissions, when available, as a factor in both steps of the determination (*i.e.*, determining both risk acceptability and ample margin of safety). See 54 FR 38047, 38050–38051, 38053 (we acknowledge a probable overestimate of emission levels in determining that risk and overall incidence is probably less than the maximum estimated levels). For the final rule amendments adopted today, years of monitoring data show that actual emissions have been consistently lower than allowable levels (69 FR 48346–48347). Moreover, there is a sound empirical basis for coke oven emissions to be lower than theoretically allowable levels. To allow for process variability, sources typically strive to perform better than required by emission standards so that the emission

[15] This is not to say that the EPA may impose significant reductions across an entire source category to alleviate health risks posed by co-location at a subset of facilities. In these circumstances, EPA believes it should further parse its emissions standards so as to impose greater reductions only on those facilities with significant co-location of other emissions. Put another way, EPA may permissibly develop section 112(f) standards that could result in different controls for co-located source categories at a facility than for the same source category which is not co-located.

increases which occur on individual days due to process variability remain below emission standards. Failure to consider these data in risk estimates would unrealistically inflate risk levels.

It is incorrect that a large number of these coke batteries are out of compliance. The batteries are inspected every day to determine compliance with the emission limits for doors, lids, offtakes and charging. We have compiled the results of these compliance inspections, and the details are in the rulemaking docket. The inspection results show that the coke batteries are operating consistently below the established emission limits and have shown essentially continuous compliance.

4. Exposure Duration

Comment: Two commenters disagreed with the use of a 24-hour per day exposure over a 70-year lifetime to estimate individual and population cancer risks for refined risk assessments. According to one commenter, this exposure assumption is inconsistent with the recommendations by the National Research Council and the Commission on Risk Assessment and Risk Management. In their Reports to Congress, these organizations support development of distributional approaches to exposure characterization based on knowledge of the characteristics of a population's variability. This commenter asked EPA to develop a refined exposure methodology that incorporates information available on population residency times that will more accurately reflect population risk estimates. The development of this exposure methodology should also include a probabilistic analysis of estimated exposures. The other commenter stated that the use of such an unrealistic assumption makes the results overly conservative and will lead to additional and unnecessarily stringent standards more frequently than necessary.

Response: We agree that our assumption that people may be present at their homes for 24 hours per day over a 70-year lifetime represents a scenario that likely overestimates the actual exposures received by people living near the facilities. Most people have daily activities that take them to areas where exposure concentrations are different and move to new residences periodically. Both of these behaviors will tend to lower lifetime exposures and, therefore, risk. The most significant risk reductions would occur for the group of people who are the most exposed. For these reasons, we are currently developing a methodology that will allow us to consider a variety of parameters (*e.g.*, residency time, socio-economic conditions, age distribution, demographics, size of the census block) that could affect exposure and risk to individuals and populations that live in the vicinity of facilities. Other factors (*e.g.*, emigration out of and immigration into the ''exposure area,'' social factors that affect population mobility, and census block size) may also influence the mobility of populations and, therefore, affect estimates of exposure and risk. As part of this effort, we are also investigating whether similar probabilistic techniques can be applied to the MIR to develop meaningful alternative metrics of individual risk. While this methodology is currently under development, we did not have sufficient information to apply any of these factors to these coke oven facilities.

Finally, regarding recommendations of the Commission on Risk Assessment and Risk Management, we note that our overall approach is consistent with some of those recommendations. For example, the Risk Commission recommended that ''exposure assessments should not be based on a hypothetical MEI * * * should rely on more representative estimates or a maximally exposed actual person* * *.'' Our approach was based on identifying the maximum concentration where the census data identified people as actually living, and we assumed, as discussed above, that exposure of this individual was for 70 years starting at birth. Where we varied from the Commission's recommendation in this area was in assuming a 70-year exposure duration for the population as well. As just noted, we are developing a methodology that will allow us to look at the exposure variability that might be seen in the exposed populations. See the ''Residual Risk Report to Congress'' (at pages 128–130) summarizing similarity in approaches.

5. Hazard Index

Comment: Five commenters disagreed with use of the hazard index (HI) of 1 as the safe or acceptable level for noncancer health effects. One commenter stated that the HI level of 1 should be the ample margin of safety level because the values which form the basis for calculating HI already contain sufficient layers of safety to represent the ample margin of safety. The commenter contended that the reference concentration (RfC) or reference dose (RfD) represents the most stringent ample margin of safety level EPA should adopt.

Three commenters recommended that EPA avoid establishing any bright line for a safe or acceptable level for non-carcinogens. One of these commenters explained that the HI of 1 would define both the acceptable risk level and the ample margin of safety level in one step, which is inconsistent with the two-step Benzene NESHAP framework. This commenter argued that an HI of 1 is too conservative because ''the ample margin of safety would always be set at or below an HI of 1.0, which would have an effect equivalent to a cancer level of 10^{-4} within the Benzene framework.'' The Commission on Risk Assessment and Risk Management's report selected a threshold HI of 10 because the RfC on which the HI is based already includes many uncertainty factors that should not be compounded in the ample margin of safety decision.

Another commenter stated that EPA needs to clarify that the case-by-case flexibility in the Benzene NESHAP framework also applies when interpreting hazard quotients (HQ) and HI. Although the proposal preamble did not identify a bright line, EPA's risk assessment document stated that an HI of 1 for each facility should ordinarily represent the safe or acceptable level, and that the ample margin of safety level may be lower or equal to the acceptable level, but can never be higher. The commenter objected because EPA was talking about an HI for a facilitywide analysis (rather than a specific source category) and because a rigid adherence to an HI of 1 for determining acceptable risk is unwarranted. The EPA should reserve flexibility in interpreting and applying HI and HQ acceptability, even in the screening stage. The flexibility is needed because of the variability in uncertainty factors, quality and consistency of data content, and other underlying information and assumptions. The commenter provided additional specific observations:

- In some cases, an HI or HQ can represent negligible or zero risk. There is no means to translate an HI or HQ into a probability of an individual incurring the effect (as is done for carcinogen effects).
- The EPA should do the initial screening using a target organ specific HI and should not aggregate across target organs and HAP for either the initial screening or refined assessment. No health-based conclusion can be reached from aggregating across different organs. An HI ''roll up'' for multiple chemicals' HQ must be predicated on target organ end points that are the same and a common mechanism or mode of action.

• Neither a range of 0.2 to 0.8 for HI nor a conservative default of 0.2 is permissible under the CAA. The statute only refers to the emissions and risk posed by a source category.

Response: Five commenters pointed out that a statement in the risk assessment document indicated that an HI of 1 is the safe or acceptable level. Our statement in the risk assessment document was incorrect and has been revised. We did not use an HI of 1 as the acceptable level in our analysis. In the proposal preamble, we explained that ''the maximum estimated target organ specific HI for the emissions of HAP that may cause effects other than cancer from all emission points at the facility is 0.4,'' and that ''these emissions do not exceed a level which is adequate to protect public health with an ample margin of safety'' (69 FR 48350). Furthermore, we disagree that the ample margin of safety should never be more stringent (or less stringent) than the RfC (essentially an HQ or HI of 1) since, like the cancer framework, we do not consider an HI of 1 to be a bright line. We will evaluate the magnitude of the HI on a case-by-case basis.

We disagree that an HI of 1 is equivalent to a cancer risk of 1 in 10,000 as claimed by one commenter. As stated above, statements in the risk document identifying an HI of 1 as a safe or acceptable level are not correct and have been revised. We also disagree with the commenter who felt that the HI of 1 was too health protective because it did not consider different target organs. As used in the proposal and as intended for use in future residual risk assessments, the HI limit does reflect target organ specificity.

The Commission on Risk Assessment and Risk Management's report does not say that an HI of 10 should be used as a level representing an ample margin of safety. The HI of 10 is used in that report in the context of screening (health-protective) risk assessments for residual risk. For sources with HI greater than 10, the Commission suggested an additional detailed risk assessment be performed. If the HI is still greater than 1, the facility is supposed to ''examine options/choose actions to reduce risk.'' For sources with HI between 1 and 10, facilities are supposed to voluntarily reduce emissions to achieve a lower risk category. The Commission recommended that if an HI is less than 1, no further action is required.

We also note that most of these comments deal with conceptual issues not relevant to this rulemaking. We have not needed to make definitive determinations regarding appropriateness of any HI level because we have determined that exposures to emissions of threshold HAP from coke oven batteries (all emission points) are well within acceptable levels and require no further control to achieve an ample margin of safety.

B. Risk Comments Specific to Coke Ovens

1. Acceptable Risk

Comment: Two commenters contended that EPA considered factors that might lessen the concern for risks, but did not give equal weight to factors that increase concern. For example, the EPA's analysis ignored HAP for which the Agency lacks cancer potency values.

Response: We disagree with the commenters' concern that our analysis ignored HAP for which we lack cancer potency values. For those situations when cancer potency values are not in the Integrated Risk Information System (IRIS), we have established a prioritization process for accessing health assessment information from outside EPA (as described in our ''Residual Risk Report to Congress'' on pages 56 through 58). This hierarchy includes dose-response values from EPA as well as other agencies that conduct scientific peer reviews such as the California Environmental Protection Agency Air Resources Board (CARB) and the Agency for Toxic Substances and Disease Registry (ATSDR), which is part of the U.S. Department of Health and Human Services. These non-EPA values incorporate the best available science, are conceptually consistent with EPA's risk assessment guidelines, and have undergone a level of scientific peer review. Far from being ignored, many of the health assessment values used in the assessment were derived from non-EPA sources (see Table B–1 in the risk assessment document).

Comment: The risk is underestimated because EPA did not consider the risk from all carcinogenic HAP emitted from the facility.

Response: As stated in the risk assessment document, inhalation cancer risk from the sources covered by the 1993 national emission standards was estimated using the HAP ''coke oven emissions,'' for which we have estimated a cancer URE. See CAA section 112(f)(6) which specifically acknowledges the possibility of considering risks of coke oven emissions as a whole; see also ''Residual Risk Report to Congress'' at page 108, noting that we may of necessity consider risks posed by the ''unique chemical substances'' enumerated in section 112(f)(6), rather than attempting to ascertain every element of these complex mixtures and ascertaining a risk associated with each component. It is not necessary to consider separately the presence of each constituent of the mixture, coke oven emissions, which are also known to be carcinogens since their contribution to cancer risk is subsumed into the risk from the mixture. We considered the risk due to individual constituents when assessing non-inhalation and noncancer risks, when assessing risk from emission points where the composition of the mixture may be different (*e.g.*, after the pushing emission control device), or when a screening level assessment was done. As described in the risk assessment document, we based our selection of HAP to be included in a screening level assessment on the availability of information on toxicity and emissions. Additional discussion of the HAP we considered is provided later in this preamble. The issue of HAP from co-located sources and facilitywide risk is discussed elsewhere in this preamble.

Comment: One commenter stated that we should not accept a risk greater than 1 in 10,000 because of the weight of evidence that coke oven emissions, arsenic, and benzene are ''known'' human carcinogens. In support, the commenter cited the Benzene NESHAP * * * ''particular attention will also be accorded to the weight of evidence presented in the risk assessment of potential human carcinogenicity.''

Response: While the commenter is correct that particular attention will be accorded to the weight of evidence presented in the risk assessment of potential human carcinogenicity, the weight of evidence is not the only health measure that must be considered. As stated in the Benzene NESHAP * * * ''no specific factor in isolation could be identified as defining acceptability under all circumstances'' (54 FR 38044). Therefore, the acceptability of risk depends on consideration of a variety of factors and conditions. This assessment considered all of those factors listed in the Benzene NESHAP.

2. Ample Margin of Safety

In the proposed rule, we said that even though emissions from pushing, quenching, and battery stacks are part of a different source category (because Congress singled out other emission points in section 112(d)(8) and 112(i)(8)), they ''are an integral part of the same facilities covered by the national emission standards for charging, door leaks, and topside leaks (they not only are part of the same process but emit the same HAP)'' and

could permissibly be considered in setting the emission standard today (69 FR 48340). Table 1 of the proposed rule amendments (69 FR 48346) provided estimates of the risks posed by emissions from all components of the coking process at the four facilities (*i.e.* door, lid, offtake, charging, pushing, quenching, battery stack, and by-product plant emissions).

As noted previously, EPA has not performed a complete residual risk determination for these other source categories, EPA has investigated the MIR and the population risk that result not only from the emissions being addressed by today's rulemaking but also from the other coke oven emission points located at the MACT track facilities. EPA's preliminary analysis has determined that emissions from the remaining coke oven facility emission points (pushing, quenching, battery stacks) do not cause risks appreciably greater in significance that those for the source category for which we are developing standards. Our risk estimates for pushing, quenching, and battery stacks are contained in the risk assessment document.

EPA has concluded that delaying any further reduction is unlikely to result in disproportionate controls on other parts of a coke plant should EPA ultimately determine that further controls are necessary to provide an ample margin of safety. We therefore have determined that current information does not justify the imposition of more stringent controls to provide an ample margin of safety.

Comment: One commenter suggested that EPA should also consider, in addition to the source category that is necessarily linked to the source category at issue, the risks from emissions from co-located iron and steel plants located within the same facility boundaries as the coking operations. Two of the four coke oven facilities affected by today's final rule amendments (AK Steel in Ashland, KY; and AK Steel in Middletown, OH) have integrated iron and steel plants co-located with their coking operations within their facility boundaries and under their control.

Response: EPA does not believe it is appropriate to impose a restriction on all sources within a source category (here, the coke oven emission points at issue in this rule) based on the fact that half of the sources are co-located with a distinct source. The risk to public health from integrated iron and steel plants—sources which are not necessarily co-located with coke ovens—should be addressed in the residual risk determination for that source category. Nevertheless, EPA did assess the impact that emissions from co-located integrated iron and steel plants have on their facilitywide risk estimates. The integrated iron and steel plants are located fairly far from the coking operations at the two facilities where these two source categories are present at a common site. At Middletown, the iron and steel plant is located approximately 0.5 miles northeast of the coking operations. At Ashland, the iron and steel plant is located approximately 0.9 miles south of the coking operations. EPA's screening analysis indicates that the contribution of iron and steel emissions to the MIR posed by the coke oven sources is negligible.[16] The MIR due to coking operations occurs to the west of the coking operation at the Middletown facility, and to the northwest of the coking operation at the Ashland facility. At both facilities the MIR is influenced by the proximity of the nearby population rather than by the primary wind direction, which is from the west/southwest. Stated simply, the iron and steel plants are located in such a way as to have only a very limited effect on those individuals who are most exposed to emissions from the coking operations. In fact, a reasonable rough estimate of the potential effect of integrated iron and steel plants on the MIR is less than 2 percent for both facilities.

Comment: Three commenters contended that the proposed amendments do not meet the requirements of section 112(f) or congressional intent because they do not protect the public health with an ample margin of safety. The proposed amendments would reduce risk from charging, doors, and topside leaks by only a small amount (from 200 in a million to 180 in a million) and leave 200,000 people still exposed to risks greater than 1 in a million. One commenter said these risk estimates are ''in tension'' with EPA's general goals to protect the greatest number of people possible to a risk no higher than 1 in a million and to limit the risk to a person living near a plant to a risk no higher than 1 in 10,000.

Response: As noted earlier, we do not consider the 1 in a million MIR level as a ''bright line'' mandated level of protection for establishing residual risk standards. The final rule amendments will reduce the excess lifetime cancer risks for an estimated additional 200,000 people to less than 1 in a million, a goal that is not ''in tension'' with our general goal of protecting the greatest number of people possible to risks no higher than 1 in a million. In determining the ample margin of safety (*i.e.*, the level of the standard), health risk is one factor that we must consider, along with other factors such as cost and technological feasibility. Balancing these and other factors with the ability to achieve meaningful risk reduction benefits is a critical component of the residual risk rulemaking process. We considered reducing risks further but concluded that the technology required would be cost prohibitive for this industry and therefore undesirable.

3. Scope of the Risk Analysis

Comment: The EPA's proposal did not contain any information on if or how the agency assessed the risks from acute exposure to coke oven emissions or how the proposed standards would protect public health with an ample margin of safety from such risks. The EPA ignored the recommendation from one peer reviewer on the need to justify no consideration of the health effects from acute exposure.

Response: Risks from acute exposure are of greatest concern when excess emissions occur and cause a peak or spike in ambient concentrations of a pollutant. Coking is a continuous operation (*i.e.*, the coke oven battery is operated continuously and is seldom shut down, other than for a major rebuild or extensive repairs, because the cooling during shutdown could damage oven walls). The ovens in a battery are in various stages of operation such that any emission fluctuations would be caught in the highly buoyant plume which rises continually above the batteries. From a toxicological perspective, references values derived for acute exposure assessment are higher concentrations than chronic reference values. Consequently, for situations, such as this, where there are not short periods of higher exposure levels, the chronic assessment will be controlling. In this assessment, no significant chronic non-cancer effects were identified, therefore, no acute effects would be expected.

Comment: The EPA must assess exposure through eating food in which toxics have accumulated or bioaccumulated, drinking contaminated water, and dermal exposure through contaminated soil. And, while EPA considered fish consumption at recreational levels, it did not consider

[16] Even if a screening analysis suggested an important contribution from these sources, EPA would still need to consider more detailed assessments of sources and facilities with the highest risks. For example, in this screening analysis, EPA has treated iron and steel emissions as emanating from a single point (at a specific stack height). In a more detailed analysis, EPA would represent the actual plant configuration reflecting the disparate location of emission points and stack heights.

risks to subsistence fishing population, including those on the Great Lakes and poor people in urban areas. Mercury, dioxins, lead, and PAH are examples of other toxics released from coke ovens whose primary risks are from non-inhalation pathways. The EPA must reassess the risk and include dietary pathways from all of the relevant pollutants. Another commenter recommended that EPA improve its multipathway risk assessment methods.

The commenter stated that EPA admitted that its generic environmental analysis was not intended to be used to predict specific types of effects to individuals, species, populations, or communities or to the structure and function of the ecosystem. According to one commenter, EPA's failure to consider any impact on any individual species contravenes the CAA. Another commenter recommended that EPA develop criteria for refined ecological assessments that meet the statutory specifications.

Response: The multipathway assessment used for this analysis was based on the multipathway assessment initially used for a secondary lead smelters case study and was refined through the use of EPA's most current multipathway guidance. These include, for example, EPA's Office of Solid Waste's peer-reviewed ''Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities'' [17] which provided overall guidance and chemical-specific values for bioaccumulative and persistent HAP.

The HAP included in the analysis were selected using the procedures described in the risk assessment document and parallels the selection methodology described in our recently released ''Air Toxics Risk Assessment Reference Library.'' [18] Additionally, we only included the HAP for which we had sufficient information to suggest that the HAP were emitted from the sources which are the focus of these final rule amendments and for which emissions could be estimated. The air toxics included in this assessment were a group of PAH and lead. The final rule amendments will reduce the amount of these emissions from coke ovens. Mercury would ordinarily be included in the list of persistent, bioaccumulative, and toxic (PBT) HAP to be assessed, but as discussed in the risk assessment document and in section III.B.4 of this preamble, mercury emissions were very low for this source category, primarily because volatile compounds like mercury are captured and removed in the by-product recovery plant.

Multiple routes of exposure were assessed in the multipathway assessment including both inhalation and ingestion of contaminated food, soil, and drinking water. A mixture of best-estimate central tendency and health-protective assumptions were used in order to be health-protective for both adults and children, but also to estimate risks that were not beyond the level of plausibility. This assessment uses a ''farmer/recreational fisher'' scenario. In the scenario, the farmer/recreational fisher was located at the point of the maximum impact to agricultural land near each of the facilities, and our assessment included the consumption of all types of home-produced fruit, vegetables, beef, pork, and dairy products, as well as locally-caught fish. The pathways included in this assessment were inhalation, soil ingestion, produce ingestion, fish ingestion, drinking water ingestion, and breast milk ingestion for infants. The farmer was assumed to consume locally-caught fish at the rate of a recreational fisher, but both central-tendency and high-end consumption rates based on values from the ''Exposure Factors Handbook'' were included in the analysis to increase confidence that individuals that may have higher consumption would be protected. Risks were estimated using the health-protective assumption of lifetime continuous exposures.

The screening-level ecological risk assessment used for this analysis used the same methods as the secondary lead smelters case study to estimate HAP media concentrations and to develop protective screening-level ecological toxicological dose-response values. This screening-level assessment was designed to identify and further evaluate HAP that pose a potential ecological risk and to remove from the analysis those HAP that did not pose such risks. In order to feel confident that this assessment considered threatened and endangered species, this analysis intentionally used assumptions that, overall, tend to overestimate risks. These assumptions include the following:

Choice of ecologic receptor. This assessment evaluated the species from a broader list of species (sediment dwellers, including aquatic sediment dwellers), soil dwellers, aquatic life, air and soil dwelling plants, various representative types of mammals; see risk assessment document, Table 3–8) that are considered widely distributed and provide a representative range of body sizes and diets. In cases where multiple species from which to choose were available for a particular exposure scenario (*e.g.*, a terrestrial herbivore), EPA evaluated the species with the lowest benchmark (*i.e.*, the most sensitive species) for this assessment.

Choice of risk metric. All species in the assessment are evaluated against the No Observable Adverse Effect Level (NOAEL). As the name indicates, this is a level of exposure below which one would not expect to see any adverse effects. Since relatively few animal or plant studies have determined these safe levels of exposure over an entire lifetime or several generations, a NOAEL for chronic exposures to a particular chemical must be estimated from toxicity studies of the same chemical conducted on a different species of wildlife or on laboratory animals. In these cases, to ensure that species survival is accounted for and to be more health-protective, whenever possible we used the NOAEL from studies in which more sensitive endpoints such as reproductive and developmental toxicity and reduced survival were the outcome as opposed to direct mortality. To evaluate potential risk to aquatic life, we used as a comparison benchmark EPA's Water Quality Criteria (adopted pursuant to section 304(a) of the Clean Water Act) which are used by States (and authorized Tribes) in adopting water quality standards for the protection of human health, aquatic life, and aquatic-dependent wildlife.

Further protective assumptions related to exposure. We made the additional protective assumption that terrestrial and aquatic species reside and therefore forage and drink exclusively in the area where the maximum HAP concentration is estimated. We further assumed that any HAP to which they are exposed is 100 percent bioavailable.

Protective assumptions related to emission levels. The ambient concentrations estimated for each terrestrial wildlife exposure scenario were derived from the modeling done for the human health assessment, and so contains the same protective assumption that emissions are constantly at the level allowed under the 1993 national emission standards. We know that actual emissions are less (69 FR 48496–48497) and, therefore, exposure and risk would also be less.

[17] Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Vol. 1 (peer review draft), U.S. Environmental Protection Agency, Office of Solic Waste and Emergency Response. EPA 530–D–98–001A. 1998.

[18] Air Toxics Risk Assessment Reference Library. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. Vol. I: Technical Resource Manual, EPA 453–K–04–001A. Vol. II: Facility-Specific Assessment. EPA 453–K–04–001B. April 2004.

We also assumed that the emissions from the coke facility with the highest emissions were representative of the emissions that might be anticipated from the other coke facilities subject to these final rule amendments.

Even using these highly protective assumptions, modeled concentrations remain under the NOAEL for each species, in most instances by many orders of magnitude. For risks to aquatic life, modeled risks for each HAP again remained an order of magnitude lower than the Water Quality Criteria levels.

We recognize that there are data limitations for these analyses that indicate a need for further refinement and development of multipathway and ecological risk assessment tools. The multipathway and ecological reference methodology described in the ''Air Toxics Risk Assessment Reference Library'' (see footnote 18) will be revised. While these more complex tools were not needed in the coke oven residual risk assessment (because no screening-level ecological effects were seen even when the assessment included many protective assumptions), they are important and may play a larger role in future residual risk assessments, and we will be developing future guidance.

Comment: One commenter said that because HAP emitted by coke oven batteries is persistent and bioaccumulative, EPA was obliged to consult with the Fish and Wildlife Service as required by the Endangered Species Act. The commenter further stated that such consultation should consider information in EPA's Great Waters Report,[19] issued pursuant to CAA section 112(m), that species are affected by deposition of HAP emitted by sources located in areas near the Great Lakes.

Response: Given the many protective assumptions of this assessment, we remain confident that if an individual member of a species is protected, as shown in our assessment, then the population as a whole would be protected. EPA has not identified any evidence of effect on critical habitat, given that our analysis shows no adverse effect on the terrestrial or aquatic life evaluated. Since our results showed no screening-level ecological effects, we do not believe that there is an effect on threatened or endangered species or on their critical habitat within the meaning of 50 CFR 402.14(a). Because of these results, EPA concluded a consultation with the Fish and Wildlife Service is not necessary. In this regard, we again reviewed the Great Waters Report mentioned in the public comment. There is no mention of threatened or endangered species in our ''Great Waters Reports to Congress.'' The risk assessment conducted in this rulemaking is consistent with the recommendations in the report to conduct assessments of the potential impacts of the emissions and deposition of PBT HAP on ecological systems, including water bodies.

Comment: One commenter disagreed that there is no information that would allow EPA to assess the risk to children from coke oven emissions. All of the individual constituents in coke oven emissions have been studied in children, and children have been found to be more susceptible than adults to each of the toxic components. The commenter provided extensive information on why children's airways are more susceptible to airborne carcinogens and provided health effects information on PM, PAH, and mercury. The commenter stated that an adequate risk assessment must include the acute and chronic respiratory effects of PM; cancer, reproductive, and developmental effects of PAH; and the neurotoxic effects of mercury on children.

Response: The commenter is mistaken; we did not state in the proposal preamble or risk assessment document that we had no information to assess the risk to children. We acknowledge that population subgroups, including children, may have the potential for risk greater than the general population due to greater body burden and/or greater susceptibility to the toxicant. Our risk assessment accounts for these greater body burdens. For certain exposures (*e.g.*, lead), children were explicitly assessed, while in other cases (*e.g.*, inhalation pathway) lifetime (rather than simply childhood) exposure was assumed, which would tend to yield higher estimates of risks.

In the ingestion pathway assessment, risks to children from lead, a pollutant with known hazard to children from the ingestion pathway, were explicitly assessed and presented. As part of the multipathway screening analysis (see appendix A of the risk assessment document), blood lead concentrations were predicted for estimates of cumulative lead exposure of children aged less than or equal to 7 years old. As described in the risk assessment document, the predicted blood lead concentrations all fell below the Center for Disease Control level of 10 micrograms per deciliter (μg/dL), an indicator of elevated blood concentration. The maximum level estimated was 0.1 μg/dL.

While risks to children from other pollutants were not separately assessed for the ingestion pathway (only central tendency and high end adult values were estimated), we do not consider the ingestion pathway to be the driver or highest risk pathway. The amount by which exposure factors generally increase the resultant cancer risk of children (less than 18 years of age) over a similar exposure duration for adults is less than a factor of three. Review of the ingestion pathway cancer risk estimates for the adult exposures indicates that ingestion pathway cancer risk estimates for a similar duration of children's exposure would still fall below the inhalation pathway cancer risks. Given that the highest cumulative HI for the adult exposures was on the order of 0.001, a separate estimate for children's ingestion exposure while expected to be a slightly higher value, would still fall well below an HI of concern. Consequently, the major focus for the risk assessment was placed on the inhalation analysis.

In the inhalation pathway assessment, the exposure assessment described the maximum exposure of residents near coke oven emissions. The exposed population was presumed to be exposed to airborne concentrations at their residence continuously 24 hours per day for a full lifetime. No greater inhalation exposure to neighboring residents would be feasible.

With regard to children's potentially greater susceptibility to the toxicants present in coke oven emissions, the assessment relied on Agency dose-response values which have been developed for all subgroups of the general population, including children. For example, a recent review [20] of the chronic reference value process concluded that the Agency's RfC and RfD derivation processes adequately considered potential susceptibility of different subgroups with specific consideration of children, such that the resultant RfC/RfD values pertain to the full human population ''including sensitive subgroups,'' a phrase which is inclusive of childhood.

With regard to cancer dose-response values, our revised cancer guidelines and new supplemental guidance recommend applying default adjustment factors to account for exposures occurring during early-life exposure to

[19] Deposition of Air Pollutants to the Great Waters: Third Report to Congress. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. EPA–453/R–00–005. June 2000.

[20] A Review of the Reference Dose and Reference Concentration Process. U.S. Environmental Protection Agency. Risk Assessment Forum. EPA/630/P–02/002F. December 2002.

those chemicals thought to cause cancer via a mutagenic mode of action. The effect of these guidelines on the risk assessment is discussed in detail in section I of this preamble.

In summary, our dose-response values have been developed via methodology that is intended to provide either a plausible upper-bound potency factor or an exposure with which there is likely no appreciable risk of adverse effects during a lifetime considering all population subgroups, including children.

Comment: One commenter asked EPA to faithfully apply the standards for ''influential scientific risk assessment information'' to the risk assessments that underlie residual risk rules. The commenter also asked EPA to implement and fully adhere to the Agency's Information Quality Guidelines so that the data and analysis will be sound and well represented to decision makers and the public. The commenter stated that EPA should aggressively pursue reform of its risk assessment practices in response to the advice of its key advisors, should take steps to eliminate conservative assumptions embedded in its risk estimation procedures, and should begin work on a recommended alternative approach that will produce more accurate and realistic estimates.

Response: In compliance with the Agency's Information Quality Guidelines, specifically as they apply to influential scientific risk assessments, we have taken significant steps to ensure that the substance of the information in our risk assessments supporting the coke ovens residual risk rule is accurate, reliable, and unbiased. To this end, we have used the best available science and supporting studies as well as data collected by the best available methods. For example, many of the components of our risk assessments (air quality and exposure models, toxicity values, methods for estimating emissions, etc.) have undergone independent scientific peer review on their own or as applied in specific case studies. In addition, we have subjected the final report on the coke ovens risk assessments to a peer review by experts external to the Agency through a letter review process administered by a third party. Through this peer review, we have endeavored to ensure that the presentation of information on human health and environmental risks is comprehensive, informative, and understandable. The final risk assessment document, revised per the peer review, as well as the peer reviewers' comments and our responses to them, have been made available to the public in the docket for this rulemaking.

Comment: Two commenters stated that the risk assessment was inconsistent with the Agency's Information Quality Guidelines because EPA did not use newer, peer-reviewed health effects data (*i.e.*, using the 1984 IRIS value for coke oven emissions instead of newer, peer-reviewed health effects data submitted by Sciences International).

Response: The commenters pointed to a single study [21] which interpreted only a portion of the health effects data available on coke oven emissions and was subjected to a scientific journal peer review. While such a study would not ordinarily be considered comprehensive enough or broadly-vetted enough to serve as a sole basis for risk estimates in this type of assessment (and indeed to do so could raise Data Quality Guideline issues), we did address the use of the alternately-derived cancer potency in our risk assessment (*i.e.*, compared risk estimates reported in the IRIS and the newer values). Since the use of this value did not substantially affect the level of estimated risks or the associated risk-based decision, EPA undertook no further evaluation of these health effects data. In the future, however, newer assessments of health effects can be readily considered in the residual risk program if they are sufficiently comprehensive and vetted through an appropriate scientific peer review process.

Comment: One commenter said the risk assessment was inconsistent with the Agency's Information Quality Guidelines because EPA did not provide central tendency estimates (*i.e.*, results were restricted primarily to upper bound estimates).

Response: As pointed out by the commenter, we addressed the central tendency requirements of the Information Quality Guidelines in a limited way in the risk assessment that supports this rule. As noted above, the upper-bound potency value that is presented in IRIS is routinely characterized using the standard descriptor for the cancer potency (''upper bound''), by saying that the upper bound is not likely to underestimate risks, that true risks are likely to be less, and that, for some individuals, risk may be zero. As described in the Information Quality Guidelines and reiterated in the recently published cancer guidelines, we will continue to develop and present to the extent practicable an appropriate central estimate and appropriate lower and upper-bound estimates of cancer potency. Development of new methods or estimates is a process that will require independent peer review.

We also understand that most people have daily activities that take them to areas where exposure concentrations are different and move to new residences periodically. Both of these behaviors may tend to lower lifetime exposures to coke oven emissions (*i.e.*, lower than our current assumption of 70-year exposure duration), and therefore lower individual risk attributable to coke ovens. In the proposal preamble (69 FR 48347), we presented an alternative estimate of an individual risk level adjusted to reflect the national average residency time of 12 years for comparison with the results from our 70-year exposure assumption. This change in assumption would result in a lowering of risk by approximately six-fold. It is important to note that if the cancer dose-response is reasonably linear with dose at environmental exposure levels, estimated individual risk attributable coke oven emission is lower for those living fewer years in the affected area, but estimates of total population incidence are not affected if the overall population remains stable (assuming people moving out are replaced by people moving in). Taking this into consideration and to provide better metrics by which to assess population risks in the future, we are currently developing a methodology that may allow us to consider a variety of parameters that could affect risk to populations, not just to the individual, that live in the vicinity of facilities. Other factors (*e.g.*, emigration out of and immigration into the ''exposure area,'' social factors that affect population mobility, and census block size) may also influence the mobility of populations and therefore, affect estimates of exposure and risk. As part of this effort, we are also investigating whether similar probabilistic techniques can be applied to the MIR to develop meaningful alternative metrics of individual risk. While this methodology is currently under development with subsequent evaluation and peer review to follow, we did not have sufficient information to apply any of these factors to these coke oven facilities.

Comment: One commenter said that the risk assessment was inconsistent with the Agency's Information Quality Guidelines because EPA's reasoning for not conducting a more complete probability analysis was not sufficient.

Response: We stated in our proposal that we ''considered the needs and

[21] Moolgavkar, S., *et al.* ''Estimation of Unit Risk for Coke Oven Emissions.'' *Risk Analysis*, vol. 18, no. 6, pages 813–825. 1998.

scope of the assessment'' before deciding whether to do a more refined population analysis and concluded that this ''level of refinement was not necessary * * * because the results of a probabilistic analysis are unlikely to affect the proposed risk management decisions.'' Our decision was that risks to the population at the level of the standard we proposed met the required ample margin of safety determination. Refining the population risk distribution by considering factors such as population mobility in the analysis would not change that decision, only refine the underlying results on which that determination was made. Therefore, we did not believe that the additional expenditure of time and resources to do that analysis was warranted. Also, in making this decision, we believe we are meeting the requirements of the Information Quality Guidelines by providing information that is accurate, clear, complete, and unbiased.

4. Mercury Standards

Comment: One commenter contended that EPA's proposal was unlawful because it excluded controls for mercury. The commenter argued that EPA is required to establish emission standards for each HAP and that section 112(f)(2) requires EPA to consider every HAP that a category emits to ensure that the residual risk standards adequately protect public health and the environment. The commenter cited 2002 Toxic Release Inventory (TRI) data that show AK Steel (Ashland, KY) emits 27 pounds of mercury and that Indiana Harbor Coke reported 650 pounds of mercury emissions.

Another commenter questioned why mercury and other metals were excluded from door leak emission estimates. According to the commenter, mercury is highly volatile and would be expected to occur in emissions or leaks from any part of the process. The commenter also requested that EPA explain why mercury is missing from the list of metals that were monitored in appendix C of the risk assessment document. While mercury is listed as a component of coke oven emissions in one table in appendix C, it is unclear if or how EPA used this mercury emission factor in its analyses.

Response: Our research indicates that most of the mercury that is volatilized from the coal during the coking process at by-product coke batteries is concentrated in the tar when the gas is processed in the by-product recovery plant.[22] The vast majority of the volatiles distilled from the coal are collected and processed to recover by-products. However, the commenter is correct in that emission tests have detected mercury emissions from coke ovens. For example, small quantities of coke oven gas may escape through leaks on doors, lids, and offtakes. The emission factor for mercury in Table C–23 of the risk assessment document shows that trace amounts of mercury have been detected in raw coke oven gas with a ratio to benzene soluble organics (BSO) of 2×10^{-7}. Applying this ratio to the by-product coke plant with the highest BSO emissions (AK Steel in Ashland, Kentucky in Table C–5) gives an estimate of 0.002 lb/yr of mercury emissions from leaks. These low levels of mercury emissions show that mercury emissions from charging, doors, lids, and offtakes do not contribute significantly to the health effects posed by coke oven emissions from by-product coke oven batteries.

The estimate of 27 lb/yr for the AK Steel by-product coke plant was not based on measurements. The company used an emission factor that was developed from a 1991 paper published in Germany. However, it is not in EPA's AP–42 compilation of emission factors, we have been unable to determine its basis and the type of coke battery it was developed for, and we cannot assess its applicability to U.S. coke batteries. We expect more and better data to become available in the future, and these data will be considered when the residual risk is assessed within 8 years of the promulgation of the 2003 NESHAP for pushing, quenching, and battery stacks.

We investigated the TRI reporting and found that most mercury emissions from nonrecovery batteries come from the battery stack rather than leaks on the battery, which are the subject of these final rule amendments. In addition, our examination of the TRI data reveals that the emissions reported by the nonrecovery coke plant (Indiana Harbor Coke) were overestimated and are being corrected. The plant had used an emission factor developed from testing an uncontrolled battery stack at another nonrecovery coke plant. Subsequently the company performed sampling of its own stack and found that its actual mercury emissions from the battery stack were 182 pounds per year (lb/yr). Mercury is emitted from the battery stack on nonrecovery batteries because there is no recovery of the by-products distilled from the coal; however, some mercury in the particulate phase is captured by the baghouse that is used to control emissions. These test data will be considered by EPA when the residual risk is evaluated for the 2003 NESHAP for pushing, quenching, and battery stacks.

Finally, the commenter's assumption that mercury emissions from batteries are not controlled by the standard is not correct. Mercury emissions from leaks on the battery are controlled and regulated the same way as the many other volatile pollutants in raw coke oven gas. The ovens are inspected for leaks, and work practices are used to stop leaks and contain potential emissions within the gas collection system. Standards are in place to limit emissions from charging, doors, lids, and offtakes, and these standards also effectively limit emissions of mercury (as a volatile) and other pollutants that might otherwise occur if these standards were not in place.

5. Consider Other HAP

Comment: Three commenters contended that the risk assessment is deficient because it did not adequately consider the risks associated with emissions of all HAP. One commenter stated that the 13 PBT constituents chosen for cancer and noncancer risk analysis inexplicably excluded both mercury and arsenic and that chromium and mercury were left out of the inhalation risk analysis. Other commenters state that the risk assessment must cover the carcinogenic effects of naphthalene and 1, 3-butadiene; coke and coal dust emissions from uncovered sources; and hydrogen chloride (HCl) emissions.

Response: As stated in the risk assessment document and discussed in an earlier response, inhalation cancer risk from the sources covered by this rule was estimated using the HAP ''coke oven emissions,'' for which we have developed a cancer URE. It is not necessary to consider the presence of each constituent of the mixture of coke oven emissions thought to be carcinogens since their contribution to cancer risk is subsumed into the risk from the mixture. Section 112(f)(6) contemplates such an approach, as we noted in our ''Residual Risk Report to Congress''. In conducting the non-cancer inhalation risk assessment, we did use information (toxicity and emissions) for each constituent because there are inadequate data for a non-cancer assessment of ''coke oven emissions''. In general, we considered the risk due to individual constituents when assessing non-cancer or non-inhalation risks, when assessing risk

[22] Fisher, R. ''Progress in Pollution Abatement in European Cokemaking Industry''. *Ironmaking and Steelmaking.* vol. 19, no. 6., 1992. Pages 449–456.

from emission points where the composition of the mixture may be different, (*e.g.*, after the pushing emission control device), or when the screening level risk assessment was done. The URE for coke oven emissions was used for all identified process operations covered under the 1993 national emission standards for charging, doors, lids, and offtakes and for two emission sources (pushing and quenching) covered by the 2003 NESHAP for pushing, quenching, and battery stacks. For the remaining emission sources which do not emit coke oven emissions (*e.g.*, the battery stack and the pushing emission control device), we selected constituents that had toxicity values and emissions information from these emission points in order to conduct an inhalation risk assessment or a non-inhalation, multipathway assessment. Results for the cancer and non-cancer risk assessment may be found in Tables A–2 through A–9 of the risk assessment document. Multipathway results for those HAP selected based on our selection criteria may be found in Tables A–31 through A–34.

The risk assessment did not include estimates of risk for pollutants such as ammonia, hydrogen sulfide, coal dust, and coke dust because they are not listed as HAP under section 112(b). We do not read section 112(f) as requiring consideration of criteria pollutants and other pollutants which are not HAP. Section 112(f) is the corollary of section 112(d), which of course is directed to control of HAP. It also essentially adopts the pre-1990 standard for control of HAP (*see, e.g.*, Legislative History page 876), which dealt exclusively with control of air toxics. We believe that given this linkage and prior history, Congress would have been explicit had it intended for us to dramatically change course and address risks posed by non-HAP pollutants under section 112(f).

At the time the risk assessment was performed, the cancer URE for naphthalene was not available from the CARB, a source of toxicity information we use if IRIS does not have a benchmark value. Based on the emissions information for this HAP described in the risk assessment document (*i.e.*, depending on the source, emissions of about 10 to 30 times less than the coke oven emission estimates and a cancer URE that is 18 times less potent than the URE for coke oven emissions), naphthalene is not likely to add significantly to the cancer risk estimated for this source or to have an effect on the decision.

The commenters also asked why we did not include chromium, a carcinogen, in the mix of carcinogens we assessed. Unlike naphthalene, hexavalent chromium does have a URE on IRIS, but information we received indicated that hexavalent chromium emissions from this process are unlikely due to the atomic state for this pollutant being highly oxidized and not conducive for forming in a chemical reducing atmosphere such as a coke oven. Thus, the emissions would likely be the trivalent chromium, which has not been shown to be carcinogenic. Another way to look at this issue is to assume a fixed percentage of total chromium is hexavalent. For example, applying the health-protective assumption we used in our Report to Congress on Electric Utilities [23] (that hexavalent chromium comprised 11 percent of the total chromium emissions) would result in a MIR level of approximately 1 in a million. Therefore, it is unlikely that any chromium emissions from the sources considered in this source category would have any significant impact on the estimated total cancer risk.

The URE for arsenic was applied to the battery stack and the pushing emission control device. These emission points are the only ones for which we would use arsenic's specific URE in the risk calculations because the URE for coke oven emissions accounts for the cancer risk from other emission points. The highest MIR for arsenic from these sources was less than 1 in a million.

Table 3–2 in the risk assessment document provides a detailed listing of non-cancer risks at the facility level, which includes estimates for arsenic and hydrogen chloride. The table shows that the maximum HQ for arsenic was 0.3 and was 0.00002 for hydrogen chloride. The non-cancer risks for chromium assuming all emissions are hexavalent would provide a HQ value equal to 0.01, still significantly below a value of 1. We believe, moreover, that this significantly overestimates the risk.

6. Emission Estimates

Comment: One commenter contended that the emission estimates overstated HAP emissions and discussed problems with EPA's emission factors and calculations:

- Emissions from coke oven door leaks were overstated because EPA did not use the exponential model developed in the early 1980s, overestimated the number of leaks visible from the bench and not the yard, and included emissions from doors with no visible leaks.
- The EPA did not adequately justify estimates of the frequency and severity of green pushes and understated the capture efficiency of pushing emission control devices. Benzene emissions from pushing are also overestimated.
- Emissions from battery stacks were overstated because of the extrapolation to higher opacities and the use of questionable test data for benzene.
- Emissions from by-product recovery plant process equipment were overstated because of the use of default values rather than a site-specific approach.

Response: The issue of the exponential model developed in the early 1980s has been discussed in great detail in the background document for AP–42. Relevant excerpts are summarized below:

- The theoretical model was based solely on the self-sealing mechanism and does not account for the current widespread use of supplementary sealants, new door designs, and adjusting the door seal to stop leaks.
- The exponential model is not applicable below 10 percent leaking doors, and current control levels are well below 10 percent.
- The exponential model underestimates emissions when using an arithmetic annual average for percent leaking doors (an exponential averaging of percent leaking doors must be used).
- The exponential model estimates zero emissions when no door leaks are visible from the yard, but we now know there are door leaks that cannot be seen from the yard.
- More recent sampling and analysis of door leaks of various sizes have provided real data on mass emission rates (as opposed to a theoretical and unvalidated model) and form the basis for current estimates.

We used a value of 6 percent leaking doors for doors visible from the bench but not visible from the yard, and the commenter recommended a value of 3 percent based on more recent data. The value of 6 percent is the value recommended in AP–42 and is codified in the 1993 national emission standards (doors inspected from the bench under a cokeside shed are given a correction factor of 6 percent leaking to estimate the ''yard'' equivalent). We acknowledge that the difference between the number of door leaks observed from the bench and from the yard probably varies from battery to battery and at the same battery

[23] Table 6–1, Summary of High-End Risk Estimates from Chronic Inhalation Exposure of HAP for 424 U.S. Coal-Fired Utilities Based on the Baseline Inhalation Risk Assessment. Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. Vol. 1. EPA 453/R–98–004a, February 1998, page 6–3.

over time. The commenter also thought the leak rate assigned to the small leaks visible only from the bench was too high. However, this rate was based on the smallest visible leak grade (a grade of 0.5, which is described as a leak that is barely visible and may not be seen from the yard), and we cannot arbitrarily reduce it by 75 percent as the commenter suggested. We included the variability associated with leaks visible only from the bench and the variability in leak rates in our uncertainty analysis. We think that analysis places reasonable bounds on our emission estimates.

We did not include emissions from leaks that were not visible in the emission estimates used in the risk assessment. The potential for emissions from leaks that are not visible was factored into the uncertainty analysis and indicated that actual emissions could be higher than we estimated. However, we also acknowledged that emissions could be lower than we estimated.

The frequency and severity of green pushes used in the risk analysis (not part of the source category at issue) are explained in detail in the background information document for pushing, quenching, and battery stacks (Docket Item OAR–2003–0051–0085). The document estimates the frequency of green pushes once the 2003 NESHAP for pushing, quenching, and battery stacks is fully implemented. Admittedly, better estimates can be made in the future based on actual performance data generated after the compliance date of the final rule amendments. The projections of methylene chloride soluble organics (MCSO) emissions are based on the performance of the best-performing batteries that were used to develop the MACT floor. Data for 3,700 observations from 15 batteries that were the best performers had only one severely green push with an opacity exceeding 50 percent. Two other batteries that will have to improve their performance to meet the standard had 2 percent green pushes. A best estimate of 0.5 percent severely green pushes was judged likely to be an overestimate once all batteries were subject to the standard. For moderately green pushes in the range of 30 to 50 percent opacity, the best-controlled batteries averaged 0 percent to 5 percent of the pushes in this range (13 out of 3,700 observations). An upper-bound estimate of 5 percent was used for moderately green pushes.

A capture efficiency of 10 percent for a severely green push is based on observations that most of the emissions escape capture during pushing and the fact that heavy emissions (some observed at 90 to 100 percent opacity) continue during travel to the quench tower when there is no hood to capture any of the emissions. During a push that is not green, some emissions escape capture and again none of the emissions during travel are captured; consequently, an estimate of 90 percent capture seems reasonable for that case. A best estimate of 40 percent capture was used for moderately green pushes.

The benzene emission factor used for pushing is 2.4×10^{-4} lb/ton of coke based on three runs at one plant producing blast furnace coke. The commenter submitted data from a plant producing foundry coke that showed benzene emissions were less than 9×10^{-5} lb/ton, a factor of about two lower. The amount of benzene emitted from pushing will depend on how green the coke is, and a push that is fully coked would have very little benzene. It is difficult to determine which test is most representative, and the benzene emissions can be expected to be quite variable from push to push. However, even with the higher emission factor, benzene emissions from pushing were not significant in the risk analysis (*e.g.*, less than 100 lb/yr).

The commenter stated that the extrapolation of test results for battery stacks based on opacity is unsupportable because there is no established relationship between opacity and HAP. As explained in the background document, the battery stack that was tested had a very low opacity (1.7 percent), but the 2003 NESHAP are expected to achieve an average opacity of 5 percent for battery stacks. Consequently, applying the test results for this one battery to all other batteries to estimate the emissions once the 2003 NESHAP become effective could underestimate emissions. Although no correlation has been firmly established between opacity and HAP, there is an established relationship between opacity and mass concentration of particles. In addition, sampling and analysis has shown that the PM in battery stack emissions contains HAP, including organic PM and PAH. (These PAH are a primary constituent of coke oven emissions, the primary HAP evaluated in the risk assessment.) Consequently, battery stack emissions were scaled from 1.7 to 5 percent opacity to avoid underestimating emissions from other batteries once the standard is implemented.

The commenter stated that EPA used the results from the two highest of four tests to estimate benzene emissions from battery stacks and that using the average of all four tests would have resulted in emissions that were 40 percent lower. The results for benzene in parts per million (ppm) for the four tests were 0.1 to 0.2, 0.6 to 1.6, 1.8 to 4.1, and 2.6 to 3.2. One of the four tests is an order of magnitude less than the others and appears to be an outlier. The average values of the other three tests are 1, 3, and 3 ppm. We used a value of 3 ppm because it is the statistical mode (most frequently occurring test average), it is representative of two of the four tests, and this value would not tend to underestimate emissions. Using the average value for all four tests would have resulted in an emissions estimate 40 percent lower than our original estimate. However, even if our original estimate overestimates emissions, there were no significant adverse health effects estimated for this source for benzene. In addition, EPA will re-evaluate the emissions and risks from battery stacks within 8 years after the promulgation date of the MACT standard for pushing, quenching, and battery stacks. At that time, the emission estimate will be revised based on additional test data that become available.

Benzene emissions from process equipment in the by-product recovery plant were estimated from AP–42 emission factors, site-specific information on the processes, and their capacities. The commenter recommended using EPA's TANKS model with detailed site-specific information to estimate emissions because it would be more accurate and emissions would be lower. However, the AP–42 emission factors that we used have been widely accepted and used in other contexts, and they account for sources that have controls in place. We did not have detailed and verifiable information for the numerous site-specific factors that would be needed to use the TANKS model. We agree with the commenter that the use of TANKS is an acceptable alternative when such details are available and the model is applicable to the emission point of interest. However, there are some process vessels in the by-product plant where the model is not applicable because it does not fully account for the emission mechanism, such as tanks that are heated or purged and have a vapor flow other than from working and breathing losses, uncovered tanks, those for which there is no good estimate of the vapor phase concentration, and condensers.

The commenter pointed out that we used site-specific monitoring data to estimate benzene emissions from equipment leaks for all plants except one (Tonawanda Coke) and that the emission factors applied to this plant overestimated emissions. We requested

site-specific monitoring data from all plants to estimate emissions, but we did not receive such information from Tonawanda Coke. We agree that generally the site-specific approach provides emission estimates lower than those from the default emission factors. Our emission estimates were health protective, and even with a tendency to overestimate benzene emissions from Tonawanda Coke, the estimated risk from these benzene emissions is low.

C. Comments on Section 112(d)(6) Review Policy

1. Approach for Existing Sources

Comment: Eight commenters agreed that a new analysis of MACT floors for existing sources is not part of the 8-year review requirement. As EPA concluded, such periodic re-determination of the MACT floor would effectively convert existing source requirements into new source requirements. In support, one commenter pointed to the plain language of CAA section 112(d)(6), the legislative history, similar review requirements under sections 109 and 111, and the absence of Congressional intent for new floor analyses.

Two commenters disagreed with EPA's conclusions. One commenter explained that the MACT floor provisions in section 112(d)(3) give meaning to the phrase ''emission standards promulgated under this section'' in section 112(d)(6) so that EPA is obligated to do a new floor analysis when revising the standards for existing sources. In addition, EPA's argument (that omission of the term ''emission limitation achieved'' suggests that no additional floor determination is required) ignores the statutory text. There is no need to include the floor language in section 112(d)(6) since section 112(d)(3) already ensured that any existing source standard would meet the floor requirements. The EPA's other argument (that additional floor analyses would effectively convert existing source standards into new source standards) is unreasonable and not necessarily true because EPA could find that sources do not perform better than the floor level of control. If facilities developed methods to reduce HAP emissions in the previous 8 years, requiring all sources in the category to achieve similar control would be consistent with Congressional intent under section 112 and the specific direction given in section 112(d)(6).

Response: Section 112(d)(6) requires us to ''* * * review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section.'' The provision does not mandate that this review be conducted in a single, unvarying manner, other than having to take into account ''developments in practices, processes, and control technologies.''

The commenter maintained that because of the reference to ''emission standards promulgated under this section,'' we are necessarily required to repeat the section 112(d) standard development process which includes re-determining MACT floors. A more natural reading of the provision is that we are to review the section 112(d) standards considering developments in practices, processes, and control technologies. EPA may then, in its discretion, amend the standards if the agency concludes such action is necessary. Indeed, we believe that this is the meaning Congress intended, since section 112(d)(6) originated in House and Senate Committee provisions that predated introduction of the MACT floor language, and mirrors routine periodic reevaluation requirements found in other statutory provisions requiring technology-based standards. Moreover, we reiterate that there is no indication that Congress intended for section 112(d)(6) to inexorably force existing source standards progressively lower and lower in each successive review cycle, the likely result of requiring successive floor determinations (69 FR 48351).

We note that with respect to revision of standards for new sources, the section 112(d)(6) analysis of practices, processes, and control technologies, and costs and emission reductions associated with those technologies (conducted as part of the determination of whether different standards are necessary), may indicate that revised standards for new sources are warranted. The final rule amendments do not adopt different standards for new by-product batteries. New by-product batteries would be required to meet zero leak standards for doors, lid, and offtakes unless a new by-product technology (such as operation of the ovens under negative pressure) is developed. The by-product battery technology currently in use cannot achieve zero leaks; consequently, new coke batteries would likely be nonrecovery batteries, which have been the only type of new battery constructed in the past 20 years. We are amending the charging limit for new nonrecovery batteries to reflect new technical developments (69 FR 48351). These changes can be readily incorporated at new sources with minimal cost.

2. Relationship Between Residual Risk Standards and Review Requirements

Comment: Six commenters stated that once EPA promulgates a standard that provides an ample margin of safety, the review requirement under section 112(d)(6) is satisfied. One commenter stated that Congress intended the section 112(d)(6) review to update the underlying technology-based standards irrespective of residual risk.

Response: We begin by noting ambiguity in the text and placement of section 112(d)(6). The obligation to periodically review (and possibly update) emissions standards applies to standards promulgated under ''this section.'' A possible reading of the word ''section'' is that the periodic review obligation applies not only to emissions standards adopted under section 112(d), but also to emissions standards adopted under any other provision of section 112, including section 112(f) (note that section 112(f)(2) is entitled ''emissions standards''). On the other hand, section 112(d)(6) is placed in the context of section 112(d) generally, which deals only with technology based ''MACT'' standards. This placement could be construed as requiring the periodic review obligation to only apply to emissions standards adopted under section 112(d).

We resolve this ambiguity by concluding that section 112(d)(6) should be interpreted as applying only to standards adopted under section 112(d). This conclusion is based on several factors. First, all of the other provisions of section 112(d) are specific to the obligation to adopt technology standards. It would be inconsistent with the structure of section 112(d) as a whole to conclude that section 112(d)(6) should be construed to apply more broadly than all of the other companion provisions in section 112(d).

Second, it is natural to assume that the technology on which a particular section 112(d) standard is based could evolve over time and allow EPA, as appropriate, to update the standard to reflect the evolving technology. Other text in section 112(d)(6) is clearly focused on this possibility of technological innovation (''* * * taking into account developments in practices, processes, and control technologies * * *''). In contrast, the basic obligation under section 112(f) is to make sure that public health risks due to emissions from a category or subcategory provide an ample margin of safety. Technology (and the possibility that technology will improve over time) remains relevant under section 112(f), but only for the purpose of determining an appropriate

ample margin of safety. Notably, technology is only one of many factors that may be relevant in determining the ample margin of safety. Thus, evolving technology—which is the clear focus of section 112(d)(6)—is central to the purposes of section 112(d), while it is only one consideration among many that may be relevant under section 112(f). If Congress had intended section 112(d)(6) to encompass section 112(f), a broader range of considerations would logically have been mandated for the periodic review.

Finally, we believe our interpretation is supported by legislative history. The genesis of section 112(d)(6) can be traced to earlier bills passed by the Senate and the House, all of which made it clear that the periodic review applied to section 112(d) MACT standards.[24] Of particular weight is the Report of the Senate Committee on Environment and Public Works on the Clean Air Act Amendments of 1989 that clarifies that the section 112(d)(6) review provisions were intended to apply to MACT standards: ''The Administrator is to review and revise emission standards promulgated under section 112(d) no less than every seven years.''

Having said that, we believe that the findings that underlie a section 112(f) determination should be key factors in making any subsequent section 112(d)(6) determinations for the related section 112(d) standard. For example, if the ample margin of safety analysis for the section 112(f) standard was not based at all on the availability or cost of particular control technologies, then advances in air pollution control technology should not justify revising the MACT standard pursuant to section 112(d)(6) because the section 112(f) standard would continue to assure an adequate level of safety. Similarly, if the ample margin of safety analysis for a section 112(f) standard shows that remaining risk for non-threshold pollutants falls below 1 in a million and for threshold pollutants falls below a similar threshold of safety, then no further revision would be needed because an ample margin of safety has already been assured.

D. Specific Comments on Section 112(d)(6) Review of Coke Ovens

1. Nonrecovery Technology

Comment: One commenter stated that EPA admitted that risk levels could be reduced substantially with nonrecovery technology. However, EPA decided not to require this technology because the costs of replacing existing batteries with nonrecovery batteries would be financially crippling to the industry. Although EPA provided some cost estimates, the Agency did not say why that cost would be crippling to the industry or even to the individual companies involved. Rather, EPA explained that the industry is currently depressed and plants might choose to shut down. The EPA must substantiate its claims.

Response: We explained at proposal that replacing existing batteries with nonrecovery batteries would be financially crippling because the construction of a nonrecovery battery requires a capital investment on the order of hundreds of millions of dollars (about $300 per ton of coke capacity). For example, the estimated capital cost to replace batteries on the MACT track ranges from $50 to $290 million per plant based on the existing coke capacity at these plants. Based on recent trends that show a continuing decline in domestic coke capacity due to shutdowns, these coke facilities would be more likely to permanently close rather than construct new nonrecovery batteries. For example, 12 of the 30 coke plants operating in 1993 have permanently shut down, and five of these plants were on the MACT track. Consequently, we determined that requiring the replacement of existing batteries with nonrecovery batteries was not a reasonable or economically feasible option.

We also examined the ability of the companies involved to recoup their investment if they were to replace existing batteries with nonrecovery batteries. The four existing by-product coke plants on the MACT track are owned by two companies: AK Steel, which produces furnace coke for internal consumption, and Tonawanda Coke Corporation, which produces 15 to 20 percent of the foundry coke sold in the U.S. Based on the Quarterly Financial Report from the U.S. Bureau of the Census,[25] the average return on sales for all reporting companies within the iron and steel industries from 2nd Quarter 2003 to 2nd Quarter 2004 ranged from negative 5.9 percent to 9.8 percent. The weighted average price of coke is approximately $120 per short ton. Using the highest profit rate in 2004 (which is optimistic), the implied profit per short ton is approximately $12 per short ton. Our conclusion is that with a 7 percent discount rate, companies would not able to recoup investment for a nonrecovery battery (approximately $300 per ton). Even a 50-year time profile at this profit level would not be sufficient to offset the investment. Therefore these coke facilities would be more likely to permanently close rather than construct new nonrecovery batteries. These closures could have industry wide implications, particularly for the foundry coke market, since Tonawanda accounts for a significant share of foundry coke production in the U.S.

2. Lack of New Requirements

Comment: One commenter believed that the proposed amendments were deficient because they contained no new requirements despite the remaining risk from facilities.

Response: The commenter is incorrect—the final rule amendments are new and provide more stringent requirements for the MACT track batteries. The limit for leaking doors decreases from 5 percent to 4 percent for foundry coke batteries and to 3.3 percent for other batteries, the limit for lid leaks decreases from 0.6 percent to 0.4 percent, and the limit for offtake leaks decreases from 3 percent to 2.5 percent. The standard for new batteries and for reconstructed batteries if there is an increase in capacity is already quite stringent. Except for batteries utilizing a new by-product recovery technology (such as by-product ovens operated under negative pressure), the standard is 0 percent leaking doors, lids, and offtakes. The current by-product battery technology cannot achieve this level of control; consequently, new batteries are likely to use the nonrecovery technology. In fact, the only new batteries constructed over the past 20 years have been nonrecovery batteries.

3. Charging Limit for Nonrecovery Batteries

Comment: One commenter requested that the proposed limit for charging (20 percent opacity for five consecutive charges) in 40 CFR 63.303(d) also apply to existing nonrecovery batteries, not just new batteries as proposed. As proposed, the charging limit would not apply to nonrecovery batteries in the commenter's state (including one existing plant and a new plant for which construction began before the date of proposal).

Response: We based our proposal for more stringent standards for new sources on the performance of the best-controlled source, and this plant was developing an improved capture system

[24] *See* S. 1894, Clean Air Standards Attainment Act of 1987; S. 1630, Clean Air Act Amendments of 1989; and H.R. 3030, Clean Air Act Amendments of 1990.

[25] Table 4, Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations. U.S. Bureau of the Census, Second Quarter, Series QFR 04–2Q. 2004.

for charging emissions. We concluded that it was not appropriate to increase the stringency of the current NESHAP for already-operating nonrecovery batteries. This limit is appropriate for new sources, which are those constructed after the date of proposal of these final rule amendments, because it allows the new requirements to be incorporated into the considerations of design and operation of the new source. Further, we believe that the quantified limits on PM which two of the already-operating nonrecovery batteries are achieving (69 FR 48351–48352) can be readily (and appropriately) incorporated in these batteries' operating permits as part of the State implementation plan process. The suggestion by the commenter that we use this rulemaking to amend the standard for these batteries to lock in their level of performance thus appears to be unnecessary.

4. Costs

Comment: Two commenters asked EPA to avoid characterizing the costs of $4,500/yr as ''small,'' ''minimal'' and ''very little.'' The additional reduction that would be achieved is the last increment in a series of reductions made by a distressed industry. The commenters stated that, in their opinion, the incremental cost effectiveness is actually high ($45,000 per ton), and the costs should be presented in this format. They stated that the EPA should also recognize the industry's success and overall cost in reducing emissions to meet the stringent level of control.

Response: The original 1993 national emission standards resulted in oven repairs, increased maintenance, and better work practices that have reduced emissions to allow batteries to meet a more stringent level of control. All of these activities have resulted in increased costs for the control of emissions, although the emission reduction benefits are substantial. In addition, the 1993 national emission standards require daily monitoring to identify leaks, and the data show the industry's success in reducing emissions.

We believe the cost of complying is reasonable considering that an estimated 200,000 fewer people will be exposed to risks greater than 1 in a million, and the annual cancer incidence would be reduced by 0.03. We agree with the commenters that the estimate of $4,500/yr is the most recent increment in a series of reductions, but remain steadfast in our belief that this number is minimal.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA 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 Executive Order defines a ''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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this regulatory action is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, this action was submitted to OMB for Executive Order 12866 review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule amendments have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection request (ICR) prepared by EPA has been assigned EPA ICR No. 1362.07. The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The final rule amendments establish work practice requirements designed to improve control of door leaks applicable to all nonrecovery coke oven batteries. The owner or operator also is required to add certain information on malfunctions associated with door leaks to the startup, shutdown, and malfunction plan. New nonrecovery batteries also are required to implement the same work practice standards that already apply to existing nonrecovery batteries. Plant owners or operators are required to submit an initial notification of compliance status and semiannual compliance reports. Records are required to demonstrate compliance with applicable emission limitations and work practice requirements. Additional requirements apply to a new nonrecovery coke oven battery, but none are expected during the 3-year period of this ICR. This action does not impose any new or revised information collection burden on by-product coke oven batteries subject to the final rule amendments. These batteries are currently meeting the monitoring, recordkeeping, and reporting requirements in the 1993 national emission standards.

The increased annual average monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years of the ICR) is estimated to total 448 labor hours per year at a cost of $28,338. This includes an increase of three responses per year from one respondent for an average of about 148 hours per response. No capital/startup costs or operation and maintenance costs are associated with the monitoring 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 part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments. For the purposes of assessing the impacts of today's final rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that of the five companies subject to the requirements of the final rule amendments, one company (operating a total of three batteries) is considered a small entity but it will experience no significant additional regulatory costs because it is already meeting the stricter emissions limitations for by-product coke oven batteries included in the final rule amendments, as well as the monitoring, recordkeeping, and reporting requirements.

Although the final rule amendments will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the final rule amendments on small entities. Prior to proposal, we held meetings with industry trade associations and company representatives to discuss the amendments and have included provisions that address their concerns.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. No significant costs are attributable to the final rule amendments. Thus, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendments do not significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule amendments are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected plants are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes.''

The final rule amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, 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. No tribal governments own plants subject to the MACT standards for coke oven batteries. Thus, Executive Order 13175 does not apply to the final rule amendments.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While these final rule amendments are not subject to the Executive Order because they are not economically significant as defined in Executive Order 12866, this rule is relevant under Executive Order 13045 because it represents the first application of the Agency's ''Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens.'' In particular, the Supplemental Guidance addresses the potential of an increased susceptibility to developing cancers that may occur later in life associated with exposure to compounds with a mutagenic mode of action in the early-life years. Following the Agency's Supplemental Guidance for compounds that act through a mutagenic mode of action, we have applied a default adjustment factor in developing estimates of lifetime cancer risks in this rulemaking to account for any potential susceptibility that may be due to early-life or childhood exposure. The results of this assessment are contained in section I of this preamble.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The final rule amendments are not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the final rule amendments are not likely to have any adverse energy impacts.

I. National Technology Transfer Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable VCS.

The final rule amendments involve technical standards. The final rule amendments use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D (PM) and 9 (opacity) of 40 CFR part 60, appendix A.

Consistent with the NTTAA, we conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 2F, 2G, 5D, and 9. One VCS was identified as an acceptable alternative to EPA test methods for the purposes of the final rule amendments. The ASME PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference) is cited in the final rule amendments for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981—Part 10 is an acceptable alternative to Method 3B.

Our search for emissions monitoring procedures identified fourteen VCS applicable to the final rule amendments. The EPA determined that twelve of the VCS identified for measuring PM were impractical alternatives to EPA test methods due to lack of equivalency, detail, specific equipment requirements, or quality assurance/quality control requirements. The two remaining VCS identified in the search were not available at the time the review was conducted because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly Method 1) and ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2. Therefore, EPA did not adopt those VCS for this purpose. Detailed information on the EPA's search and review results is included in the docket.

Sections 63.309(j) through (l) of the final rule amendments list the EPA test methods that are required. Under 40 CFR 63.7(f) and 40 CFR 63.8(f), a source may apply to EPA for permission to use alternative test methods or monitoring requirements in place of any of the EPA test methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments 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). The final rule amendments will be effective on April 15, 2005.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: March 31, 2005.

Stephen L. Johnson,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (i)(3) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(3) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), and 63.9323(a)(3) and Table 5 to Subpart DDDDD of this part.

* * * * *

Subpart L—[Amended]

■ 3. Section 63.300 is amended as follows:

■ a. Redesignating existing paragraphs (a)(3) through (a)(5) as (a)(5) through (a)(7); and

■ b. Adding new paragraphs (a)(3), and (a)(4).

§ 63.300 Applicability.

(a) * * *

(3) July 14, 2005, for existing by-product coke oven batteries subject to emission limitations in § 63.302(a)(3) and for nonrecovery coke oven batteries subject to the emission limitations and requirements in § 63.303(b)(3) or (c);

(4) Upon startup for a new nonrecovery coke oven battery subject to the emission limitations and

requirements in § 63.303(b), (c), and (d). A new nonrecovery coke oven battery subject to the requirements in § 63.303(d) is one for which construction or reconstruction commenced on or after August 9, 2004;

* * * * *

■ 4. Section 63.302 is amended by adding new paragraph (a)(3) to read as follows:

§ 63.302 Standards for by-product coke oven batteries.

(a) * * *

(3) On and after July 14, 2005;

(i) 4.0 percent leaking coke oven doors for each tall by-product coke oven battery and for each by-product coke oven battery owned or operated by a foundry coke producer, as determined by the procedures in § 63.309(d)(1);

(ii) 3.3 percent leaking coke oven doors for each by-product coke oven battery not subject to the emission limitation in paragraph (a)(3)(i) of this section, as determined by the procedures in § 63.309(d)(1);

(iii) 0.4 percent leaking topside port lids, as determined by the procedures in § 63.309(d)(1);

(iv) 2.5 percent leaking offtake system(s), as determined by the procedures in § 63.309(d)(1); and

(v) 12 seconds of visible emissions per charge, as determined by the procedures in § 63.309(d)(2).

* * * * *

■ 5. Section 63.303 is amended as follows:

■ a. Redesignating paragraphs (b)(3) and (b)(4) as (b)(4) and (b)(5);

■ b. Adding new paragraph (b)(3); and

■ c. Adding new paragraphs (c) and (d).

§ 63.303 Standards for nonrecovery coke oven batteries.

* * * * *

(b) * * *

(3) For charging operations, the owner or operator shall implement, for each day of operation, the work practices specified in § 63.306(b)(6) and record the performance of the work practices as required in § 63.306(b)(7).

* * * * *

(c) Except as provided in § 63.304, the owner or operator of any nonrecovery coke oven battery shall meet the work practice standards in paragraphs (c)(1) and (2) of this section.

(1) The owner or operator shall observe each coke oven door after charging and record the oven number of any door from which visible emissions occur. Emissions from coal spilled during charging or from material trapped within the seal area of the door are not considered to be a door leak if the owner or operator demonstrates that the oven is under negative pressure, and that no emissions are visible from the top of the door or from dampers on the door.

(2) Except as provided in paragraphs (c)(2)(i) and (ii) of this section, if a coke oven door leak is observed at any time during the coking cycle, the owner or operator shall take corrective action and stop the leak within 15 minutes from the time the leak is first observed. No additional leaks are allowed from doors on that oven for the remainder of that oven's coking cycle.

(i) Except as provided in paragraph (c)(2)(ii) of this section, the owner or operator may take corrective action and stop the leak within 45 minutes (instead of 15 minutes) from the time the leak is first observed for a maximum of two times per battery in any semiannual reporting period.

(ii) If a worker must enter a cokeside shed to stop a leaking door under the cokeside shed, the owner or operator shall take corrective action and stop the door leak within 45 minutes (instead of 15 minutes) from the time the leak is first observed. The evacuation system and control device for the cokeside shed must be operated at all times there is a leaking door under the cokeside shed.

(d) The owner or operator of a new nonrecovery coke oven battery shall meet the emission limitations and work practice standards in paragraphs (d)(1) through (4) of this section.

(1) The owner or operator shall not discharge or cause to be discharged to the atmosphere from charging operations any fugitive emissions that exhibit an opacity greater than 20 percent, as determined by the procedures in § 63.309(j).

(2) The owner or operator shall not discharge or cause to be discharged to the atmosphere any emissions of particulate matter (PM) from a charging emissions control device that exceed 0.0081 pounds per ton (lbs/ton) of dry coal charged, as determined by the procedures in § 63.309(k).

(3) The owner or operator shall observe the exhaust stack of each charging emissions control device at least once each day of operation during charging to determine if visible emissions are present and shall record the results of each daily observation or the reason why conditions did not permit a daily observation. If any visible emissions are observed, the owner or operator must:

(i) Take corrective action to eliminate the presence of visible emissions;

(ii) Record the cause of the problem creating the visible emissions and the corrective action taken;

(iii) Conduct visible emission observations according to the procedures in § 63.309(m) within 24 hours after detecting the visible emissions; and

(iv) Report any 6-minute average, as determined according to the procedures in § 63.309(m), that exceeds 10 percent opacity as a deviation in the semiannual compliance report required by § 63.311(d).

(4) The owner or operator shall develop and implement written procedures for adjusting the oven uptake damper to maximize oven draft during charging and for monitoring the oven damper setting during each charge to ensure that the damper is fully open.

■ 6. Section 63.309 is amended by adding new paragraphs (j) through (m) to read as follows:

§ 63.309 Performance tests and procedures.

* * * * *

(j) The owner or operator of a new nonrecovery coke oven battery shall conduct a performance test once each week to demonstrate compliance with the opacity limit in § 63.303(d)(1). The owner or operator shall conduct each performance test according to the procedures and requirements in paragraphs (j)(1) through (3) of this section.

(1) Using a certified observer, determine the average opacity of five consecutive charges per week for each charging emissions capture system if charges can be observed according to the requirements of Method 9 (40 CFR part 60, appendix A), except as specified in paragraphs (j)(1)(i) and (ii) of this section.

(i) Instead of the procedures in section 2.4 of Method 9 (40 CFR part 60, appendix A), record observations to the nearest 5 percent at 15-second intervals for at least five consecutive charges.

(ii) Instead of the procedures in section 2.5 of Method 9 (40 CFR part 60, appendix A), determine and record the highest 3-minute average opacity for each charge from the consecutive observations recorded at 15-second intervals.

(2) Opacity observations are to start when the door is removed for charging and end when the door is replaced.

(3) Using the observations recorded from each performance test, the certified observer shall compute and record the average of the highest 3-minute averages for five consecutive charges.

(k) The owner or operator of a new nonrecovery coke oven battery shall conduct a performance test to demonstrate initial compliance with the emission limitations for a charging

emissions control device in § 63.303(d)(2) within 180 days of the compliance date that is specified for the affected source in § 63.300(a)(4) and report the results in the notification of compliance status. The owner or operator shall prepare a site-specific test plan according to the requirements in § 63.7(c) and shall conduct each performance test according to the requirements in § 63.7(e)(1) and paragraphs (k)(1) through (4) of this section.

(1) Determine the concentration of PM according to the following test methods in appendix A to 40 CFR part 60.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas, ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' (incorporated by reference, see § 63.14).

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D, as applicable, to determine the concentration of front half PM in the stack gas.

(2) During each PM test run, sample only during periods of actual charging when the capture system fan and control device are engaged. Collect a minimum sample volume of 30 dry standard cubic feet (dscf) during each test run. Three valid test runs are needed to comprise a performance test. Each run must start at the beginning of a charge and finish at the end of a charge (*i.e.*, sample for an integral number of charges).

(3) Determine and record the total combined weight of tons of dry coal charged during the duration of each test run.

(4) Compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section as follows:

$$E_p = \frac{C \times Q \times T}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process weighted mass emissions of PM, lb/ton;

C = Concentration of PM, grains per dry standard cubic foot (gr/dscf);

Q = Volumetric flow rate of stack gas, dscf/hr;

T = Total time during a run that a sample is withdrawn from the stack during charging, hr;

P = Total amount of dry coal charged during the test run, tons; and

K = Conversion factor, 7,000 grains per pound (gr/lb).

(l) The owner or operator of a new nonrecovery coke oven battery shall conduct subsequent performance tests for each charging emissions control device subject to the PM emissions limit in § 63.303(d)(2) at least once during each term of their title V operating permit.

(m) Visible emission observations of a charging emissions control device required by § 63.303(d)(3)(iii) must be performed by a certified observer according to Method 9 (40 CFR part 60, appendix A) for one 6-minute period.

■ 7. Section 63.310 is amended by adding new paragraph (j) to read as follows:

§ 63.310 Requirements for startups, shutdowns, and malfunctions.

* * * * *

(j) The owner or operator of a nonrecovery coke oven battery subject to the work practice standards for door leaks in § 63.303(c) shall include the information specified in paragraphs (j)(1) and (2) of this section in the startup, shutdown, and malfunction plan.

(1) Identification of potential malfunctions that will cause a door to leak, preventative maintenance procedures to minimize their occurrence, and corrective action procedures to stop the door leak.

(2) Identification of potential malfunctions that affect charging emissions, preventative maintenance procedures to minimize their occurrence, and corrective action procedures.

■ 8. Section 63.311 is amended as follows:

■ a. Revising paragraph (b)(1) and adding new paragraphs (b)(3) through (7);

■ b. Revising paragraph (c)(1) and adding new paragraph (c)(3);

■ c. Revising paragraphs (d)(1) through (3) and adding new paragraphs (d)(4) through (9); and

■ d. Revising paragraphs (f)(1)(i) and (ii) and adding new paragraphs (f)(1)(iv) through (ix).

§ 63.311 Reporting and recordkeeping requirements.

* * * * *

(b) * * *

(1) Statement signed by the owner or operator, certifying that a bypass/bleeder stack flare system or an approved alternative control device or system has been installed as required in § 63.307.

(2) * * *

(3) Statement, signed by the owner or operator, certifying that all work practice standards for charging operations have been met as required in § 63.303(b)(3).

(4) Statement, signed by the owner or operator, certifying that all work practice standards for door leaks have been met as required in § 63.303(c).

(5) Statement, signed by the owner or operator, certifying that the information on potential malfunctions has been added to the startup, shutdown and malfunction plan as required in § 63.310(j).

(6) Statement, signed by the owner or operator, that all applicable emission limitations in § 63.303(d)(1) and (2) for a new nonrecovery coke oven battery have been met. The owner or operator shall also include the results of the PM performance test required in § 63.309(k).

(7) Statement, signed by the owner or operator, certifying that all work practice standards in § 63.303(d)(3) and (4) for a new nonrecovery coke oven battery have been met.

(c) * * *

(1) Intention to construct a new coke oven battery (including reconstruction of an existing coke oven battery and construction of a greenfield coke oven battery), a brownfield coke oven battery, or a padup rebuild coke oven battery, including the anticipated date of startup.

(2) * * *

(3) Intention to conduct a PM performance test for a new nonrecovery coke oven battery subject to the requirements in § 63.303(d)(2). The owner or operator shall provide written notification according to the requirements in § 63.7(b).

(d) * * *

(1) Certification, signed by the owner or operator, that no coke oven gas was vented, except through the bypass/bleeder stack flare system of a by-product coke oven battery during the reporting period or that a venting report has been submitted according to the requirements in paragraph (e) of this section.

(2) Certification, signed by the owner or operator, that a startup, shutdown, or malfunction event did not occur for a coke oven battery during the reporting period or that a startup, shutdown, and malfunction event did occur and a report was submitted according to the requirements in § 63.310(e).

(3) Certification, signed by the owner or operator, that work practices were implemented if applicable under § 63.306.

(4) Certification, signed by the owner or operator, that all work practices for nonrecovery coke oven batteries were implemented as required in § 63.303(b)(3).

(5) Certification, signed by the owner or operator, that all coke oven door leaks on a nonrecovery battery were stopped according to the requirements in § 63.303(c)(2) and (3). If a coke oven door leak was not stopped according to the requirements in § 63.303(c)(2) and (3), or if the door leak occurred again during the coking cycle, the owner or operator must report the information in paragraphs (d)(5)(i) through (iii) of this section.

(i) The oven number of each coke oven door for which a leak was not stopped according to the requirements in § 63.303(c)(2) and (3) or for a door leak that occurred again during the coking cycle.

(ii) The total duration of the leak from the time the leak was first observed.

(iii) The cause of the leak (including unknown cause, if applicable) and the corrective action taken to stop the leak.

(6) Certification, signed by the owner or operator, that the opacity of emissions from charging operations for a new nonrecovery coke oven battery did not exceed 20 percent. If the opacity limit in § 63.303(d)(1) was exceeded, the owner or operator must report the number, duration, and cause of the deviation (including unknown cause, if applicable), and the corrective action taken.

(7) Results of any PM performance test for a charging emissions control device for a new nonrecovery coke oven battery conducted during the reporting period as required in § 63.309(l).

(8) Certification, signed by the owner or operator, that all work practices for a charging emissions control device for a new nonrecovery coke oven battery were implemented as required in § 63.303(d)(3). If a Method 9 (40 CFR part 60, appendix A) visible emissions observation exceeds 10 percent, the owner or operator must report the duration and cause of the deviation (including unknown cause, if applicable), and the corrective action taken.

(9) Certification, signed by the owner or operator, that all work practices for oven dampers on a new nonrecovery coke oven battery were implemented as required in § 63.303(d)(4).

* * * * *

(f) * * *

(1) * * *

(i) Records of daily pressure monitoring, if applicable according to § 63.303(a)(1)(ii) or § 63.303(b)(1)(ii).

(ii) Records demonstrating the performance of work practice requirements according to § 63.306(b)(7). This requirement applies to nonrecovery coke oven batteries subject to the work practice requirements in § 63.303(a)(2) or § 63.303(b)(3).

(iii) * * *

(iv) Records to demonstrate compliance with the work practice requirement for door leaks in § 63.303(c). These records must include the oven number of each leaking door, total duration of the leak from the time the leak was first observed, the cause of the leak (including unknown cause, if applicable), the corrective action taken, and the amount of time taken to stop the leak from the time the leak was first observed.

(v) Records to demonstrate compliance with the work practice requirements for oven uptake damper monitoring and adjustments in § 63.303(c)(1)(iv).

(vi) Records of weekly performance tests to demonstrate compliance with the opacity limit for charging operations in § 63.303(d)(1). These records must include calculations of the highest 3-minute averages for each charge, the average opacity of five charges, and, if applicable, records demonstrating why five consecutive charges were not observed (*e.g.*, the battery was charged only at night).

(vii) Records of all PM performance tests for a charging emissions control device to demonstrate compliance with the limit in § 63.303(d)(2).

(viii) Records of all daily visible emission observations for a charging emission control device to demonstrate compliance with the requirements limit in § 63.303(d)(3).

(ix) Records to demonstrate compliance with the work practice requirements for oven uptake damper monitoring and adjustments in § 63.303(d)(4).

* * * * *

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Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 174

Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 174

[Docket No. PHMSA–98–4952 (HM–223)]

RIN 2137–AC68

Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage

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

ACTION: Final rule; response to appeals.

SUMMARY: On October 30, 2003, the Research and Special Programs Administration, predecessor agency to PHMSA, published a final rule to clarify the applicability of the Hazardous Materials Regulations to functions and activities related to the safe and secure transportation of hazardous materials in commerce, including loading, unloading, and storage operations. In response to appeals submitted by persons affected by the final rule, this final rule amends certain regulations and makes editorial corrections.

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

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366–8553, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration; or Donna O'Berry (202) 366–4400, Office of the Chief Counsel, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 2003, the Research and Special Programs Administration (RSPA), the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA), published a final rule to clarify the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation (68 FR 61906). As discussed more fully in the NPRM issued under this docket (June 14, 2001; 66 FR 32430), the purpose of the rulemaking was to address uncertainty in the regulated community and among Federal, state, and local agencies with hazardous materials safety responsibilities concerning whether and to what extent the HMR apply to particular activities and operations related to the transportation of hazardous materials in commerce. In addition, the rulemaking was intended to address uncertainty concerning the extent to which state and local agencies may regulate hazardous materials safety, particularly at facilities where the distinctions among pre-transportation, transportation, and non-transportation operations are not clearly articulated.

Clarifying the applicability of the HMR helps to eliminate uncertainty on the part of the regulated public, thereby facilitating compliance and enhancing hazardous materials safety and security. Clarifying the applicability of the HMR also has the beneficial effect of reducing or eliminating confusion concerning regulations promulgated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Environmental Protection Agency (EPA), and Occupational Safety and Health Administration (OSHA) that apply to materials that are also covered by the HMR. To the extent that DOT does not regulate in a particular area, ATF and OSHA are free to regulate to the full extent of their regulatory authority. However, where DOT does regulate in a particular area, ATF and OSHA may have limited authority to regulate in the same area. Moreover, facilities at which functions are performed in accordance with the HMR may also be subject to applicable standards and regulations issued by EPA to implement statutorily authorized programs. In addition, clarifying the applicability of the HMR helps states, local governments, and tribal governments to determine areas where they may regulate without being subject to preemption under Federal hazardous materials transportation law.

Federal hazardous materials transportation law (Federal hazmat law), codified at 49 U.S.C. 5101 *et seq.*, authorizes the Secretary of Transportation to establish regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Further, Federal hazmat law authorizes the Secretary to apply the regulations to persons who: (1) Transport hazardous materials in commerce; (2) cause hazardous materials to be transported in commerce; or (3) manufacture, mark, maintain, recondition, repair, or test a packaging or container (or component thereof) that is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce. 49 U.S.C. 5103(b)(1)(A). The law authorizes the Secretary to prescribe regulations governing any safety aspect of the transportation of hazardous materials in commerce that the Secretary considers appropriate. 49 U.S.C. 5103(b)(1)(B). Federal hazmat law defines ''commerce'' to mean trade or transportation in the jurisdiction of the United States; between a place in a state and a place outside of the state; or that affects trade or transportation between a place in a state and a place outside of the state. 49 U.S.C. 5102(1). The law defines ''transportation'' to mean ''the movement of property and loading, unloading, or storage incidental to the movement.'' 49 U.S.C. 5102(12). The statute does not define with specificity the particular activities that fall within the terms ''loading incidental to movement,'' ''unloading incidental to movement,'' or ''storage incidental to movement'' used in the statutory definition of ''transportation.''

It is clear that Federal hazmat law directs the Secretary of Transportation to address the safety and security of hazardous materials transportation, that is, the actual movement of hazardous materials in commerce and the activities related to that movement that are performed by persons who transport hazardous materials in commerce. Federal hazmat law also recognizes the critical safety impact of activities performed in advance of transportation by persons who cause the transportation of hazardous materials in commerce or by persons who manufacture and maintain containers that are represented or sold as qualified for use for such transportation.

In conformance with Federal hazmat law, the HMR currently impose regulatory requirements on persons who: (1) Perform functions in advance of transportation to prepare hazardous materials for transportation; (2) perform transportation (*i.e.*, movement and incidental loading, unloading, and storage) functions; or (3) manufacture or maintain containers that are represented or sold as qualified for use for transportation of hazardous materials in commerce. Functions performed in advance to prepare hazardous materials for transportation—now called ''pre-transportation functions''—include determining the hazard class of a material, preparing a shipping paper, providing emergency response information, selecting an appropriate packaging, filling a packaging, marking and labeling a package, and placarding a transport vehicle. ''Transportation functions'' include the movement of a hazardous material by rail car, motor vehicle, aircraft, or vessel and certain aspects of loading, unloading, and storage operations that are ''incidental'' to such movement. Under the HMR, training requirements apply to persons

who perform pre-transportation and transportation functions and to persons who manufacture or maintain packagings certified or sold as qualified for use in transportation in commerce.

We have issued a number of interpretations, inconsistency rulings, and preemption determinations in response to requests from the public for clarification concerning the meaning of ''transportation in commerce'' and whether particular activities are covered by that term and, therefore, are subject to regulation under the HMR. Loading, unloading, and storage were areas of particular confusion and concern. Although the interpretations and administrative determinations we have issued are publicly available, the regulated industry, government agencies, and non-Federal governments had not been consistently aware of their existence and availability. Further, some of the interpretations and decisions we have issued needed to be revised in light of changes in the Secretary of Transportation's and other Federal agencies' statutory authority. In the October 30, 2003 final rule, we consolidated, clarified, and revised, where necessary, these interpretations and administrative decisions and made them part of the HMR.

The final rule amended the HMR to incorporate the following new definitions and provisions:

- We defined a new term—''pre-transportation function''—to mean a function performed by any person that is required to assure the safe transportation of a hazardous material in commerce. When performed by shipper personnel, loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel and filling a bulk packaging with hazardous material in the absence of a carrier for the purpose of transporting it is a pre-transportation function as that term was defined in the October 30, 2003 final rule. Pre-transportation functions must be performed in accordance with requirements in the HMR.
- We defined ''transportation'' to mean the movement of property and loading, unloading, or storage incidental to the movement. This definition is consistent with the definition of ''transportation'' in Federal hazmat law. Transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving, such as shipping papers, bills of lading, freight orders, or similar documentation.
- We defined ''movement'' to mean the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.
- We defined ''loading incidental to movement'' to mean the loading by carrier personnel or in the presence of carrier personnel of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it. For a bulk packaging, we defined ''loading incidental to movement'' to mean the filling of the packaging with a hazardous material by carrier personnel or in the presence of carrier personnel for the purpose of transporting it. Loading incidental to movement is regulated under the HMR.
- We defined ''unloading incidental to movement'' to mean the removal of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or the emptying of a hazardous material from a bulk packaging after a hazardous material has been delivered to a consignee and prior to the delivering carrier's departure from the consignee facility or premises. Unloading incidental to movement is subject to regulation under the HMR. Unloading by a consignee after the delivering carrier has departed the facility is not unloading incidental to movement and is not regulated under the HMR.
- We defined ''storage incidental to movement'' to mean storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document. However, in the case of railroad shipments, even if a shipment has been delivered to the destination shown on the shipping document, if the track is under the control of a railroad carrier or track is used for purposes other than moving cars shipped to or from the lessee, storage on the track is storage incidental to movement. We revised the definition of ''private track or private siding'' to make this clear. Storage at a shipper facility prior to a carrier exercising control over or taking possession of the hazardous material or storage at a consignee facility after a carrier has delivered the hazardous material is not storage incidental to movement and is not regulated under the HMR.
- We amended § 171.1 of the HMR to list regulated and non-regulated functions. Regulated functions include: (1) Activities related to the design, manufacture, and qualification of packagings represented as qualified for use in the transportation of hazardous materials; (2) pre-transportation functions; and (3) transportation functions (movement of a hazardous material and loading, unloading, and storage incidental to the movement). Non-regulated functions include: (1) Rail and motor vehicle movements of a hazardous material solely within a contiguous facility where public access is restricted; (2) transportation of a hazardous material in a transport vehicle or conveyance operated by a Federal, state, or local government employee solely for government purposes; (3) transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle; and (4) any matter subject to U.S. postal laws and regulations.
- We amended § 171.1 of the HMR to indicate that facilities at which functions are performed in accordance with the HMR may be subject to applicable standards and regulations of other Federal agencies or to applicable state or local government laws and regulations (except to the extent that such non-Federal requirements may be preempted under Federal hazmat law). Federal hazmat law does not preempt other Federal statutes nor does it preempt regulations issued by other Federal agencies to implement statutorily authorized programs. The final rule was intended to clarify the applicability of the HMR to specific functions and activities. It is important to note that facilities at which pre-transportation or transportation functions are performed must comply with OSHA and state or local regulations applicable to physical structures—for example, noise and air quality control standards, emergency preparedness, fire codes, and local zoning requirements. Facilities may also have to comply with applicable state and local regulations for hazardous materials handling and storage operations. Facilities at which pre-transportation or transportation functions are performed may also be subject to EPA and OSHA regulations. For example, facilities may be subject to EPA's risk management; community right-to-know; hazardous waste tracking and disposal; and spill prevention, control and countermeasure requirements, and OSHA's process safety management and emergency

preparedness requirements. Similarly, facilities at which pre-transportation functions are performed may also be subject to ATF regulations concerning the handling of explosives. In particular, the October 30, 2003 final rule clarified that the exception in 40 U.S.C. 845(a)(1), which excepts from ATF regulation ''any aspect of the transportation of explosive materials * * * which are regulated by the United States Department of Transportation'', does not apply in situations where facility personnel perform pre-transportation functions with respect to preparing explosives for transportation.

II. Appeals of the Final Rule

We received 14 appeals of the final rule from Ag Processing Inc. (AGP); Akzo Nobel (Akzo); Archer Daniels Midland Company (Archer Daniels); the Association of American Railroads (AAR); the Dangerous Goods Advisory Council (DGAC); the Dow Chemical Company (Dow); DuPont; Eastman Chemical Company (Eastman); the Institute of Makers of Explosives (IME); Norfolk Southern Corporation (Norfolk Southern); the Spa and Pool Chemical Manufacturers' Association (SPCMA); the Sulphur Institute; the Utility Solid Waste Activities Group (USWAG); and Vermont Railway, Inc. (Vermont Railway).

Appellants raised a number of issues related to the consistency of the final rule with Federal hazardous materials transportation law; state and local regulation of hazardous materials facilities; the relationship of the HMR to regulations promulgated by OSHA, EPA, and ATF; the definitions adopted in the final rule for ''unloading incidental to movement,'' ''transloading,'' and ''storage incidental to movement;'' and the consistency of the HM–223 final rule with security regulations adopted in a final rule issued under Docket No. HM–232. A number of appellants indicated an intention to file additional information to supplement their appeals. To date, however, we have received no supplemental information.

The October 30, 2003 final rule was to become effective on October 1, 2004. On May 28, 2004, we published a document delaying the effective date of the final rule until January 1, 2005 (69 FR 30588). On December 8, 2004, we published a document further delaying the effective date until June 1, 2005 (69 FR 70902). Delaying the effective date provided us with sufficient time to fully address the issues raised by the appellants and to coordinate the appeals document fully with the other Federal agencies that assisted us in developing the HM–223 final rule.

Specific issues raised by the appellants are addressed in detail below.

III. Appeals Granted

A. Transloading

The October 30, 2003 final rule defined a new term—''transloading.'' Transloading was defined as the transfer of a hazardous material at an intermodal transfer facility from one bulk packaging to another for purposes of continuing the movement of the hazardous material in commerce. In the October 30, 2003 final rule, transloading is identified as both a pre-transportation and a transportation function. A number of appellants expressed concern that the final rule's treatment of ''transloading'' was inconsistent and could lead to confusion as to whether storage of hazardous materials at a transloading facility is considered storage incidental to movement and subject to HMR requirements. ''HM–223 is inconsistent in its treatment of transloading * * * [PHMSA should] clarify transloading as a transportation function. The distinction between transportation and pre-transportation functions is particularly important with respect to storage issues since storage incidental to transportation is regulated by [PHMSA].'' (Akzo) Another appellant notes that ''designating transloading as a pre-transportation function would be inconsistent with [PHMSA]'s approach to other intermodal facilities.

* * * The similarities between transloading facilities and other intermodal facilities are apparent. In both cases, the facilities typically are carrier owned but operated by contractors or licensees pursuant to agreements with railroads. In both cases, the materials being transported are in the midst of the transportation process, with origin and destination points at different locations.'' (AAR) One appellant suggests that we add to the definition of ''storage incidental to movement'' an indication that ''storage incidental to movement includes storage of transport vehicles and packages at transloading facilities.'' (IME)

We agree with the appellants that storage of hazardous materials at transloading facilities is storage incidental to movement and subject to regulations applicable to such storage under the HMR. As one appellant notes, in 1995 and 2001, we found that Federal hazardous materials transportation law preempts state requirements prohibiting transloading operations in New York and Missouri (December 6, 1995, 60 FR 62527; and July 6, 2001, 66 FR 37089). An explicit determination in the HMR that storage at transloading facilities is considered storage incidental to movement for purposes of the HMR is, therefore, consistent with previously published administrative determinations on the issue.

Appellants also ask us to consider revising the definition of ''transloading'' to cover transloading operations that take place at facilities other than intermodal transfer facilities. ''[PHMSA should] remove the words 'at an intermodal facility' from its definition of transloading. Transloading does occur at consignee facilities. * * * It is safer and more efficient to perform this transloading at a plant site than to transport these packages to an intermodal facility.'' (Akzo Nobel) We agree that the location at which transloading occurs should not dictate whether the operation is regulated as a transportation function and are modifying the definition in this final rule.

Therefore, the Akzo, AAR, DuPont, IME, and Norfolk Southern appeals related to the definition of transloading as a transportation function are granted. In this final rule, we are amending the following provisions of the October 30, 2003 final rule:

1. In § 171.1, we are deleting paragraph (b)(4), which defined ''transloading'' as a pre-transportation function. We agree with appellants that transloading is a transportation function.

2. In § 171.1, we are revising paragraph (c)(4) to indicate that ''storage incidental to movement'' includes storage at the destination indicated on a shipping document if the original shipping document includes information that the shipment is a through-shipment to an identified final destination. For example, a shipping paper prepared by the person offering a hazardous material for transportation in commerce may show the shipment destination as a transloading facility; provided that the shipping paper or other documentation includes information that the shipment is a through-shipment and identifies the final destination or destinations of the hazardous material, storage at the facility is ''storage incidental to movement'' and subject to regulation under the HMR. Note that such storage must be of the hazardous material in its original packaging (i.e., the rail tank car) or its transloaded packaging (i.e., a cargo tank motor vehicle) in order to be considered ''storage incidental to movement.'' Note also that storage of a hazardous material after delivery to its final destination is not ''storage

incidental to movement'' and not subject to regulation under the HMR.

3. In § 171.8, we are revising the definition of ''pre-transportation function'' to remove transloading operations. We are also revising the definition of ''storage incidental to movement'' to include storage of packaged hazardous materials at intermediate destinations provided the shipping documentation indicates that the shipment is a through-shipment and includes the final destination or destinations of the hazardous material.

4. In § 171.8, we are revising the definition of ''transloading'' by removing the phrase ''at an intermodal transfer facility'' to clarify that transloading is regulated under the HMR irrespective of the location at which the operation occurs. We are also clarifying in the revised definition that transloading when performed by any person is regulated under the HMR.

Concerning the definition of ''transloading,'' as indicated above, the October 30, 2003 final rule defined ''transloading'' to mean the transfer of a hazardous material from one bulk packaging to another for the purpose of continuing the movement of the hazardous material in commerce. Appellants suggest that ''[PHMSA should] expand coverage of transloading from bulk-to-bulk to include also non-bulk-to-bulk and *vice versa*. There are times when the transfer from bulk to non-bulk or *vice versa* occurs during the logic proposed in HM–223.'' We agree that there may be situations when a hazardous material is transferred directly from a non-bulk to a bulk packaging or *vice versa* for the purpose of continuing the movement of the hazardous material in commerce. If it can be demonstrated that the shipment is a through shipment to an identified final destination, then such operations meet the definition of ''transloading'' and are subject to regulation under the HMR. Note that, as indicated above, a shipping paper or other document created at the time the shipment originates must indicate that the shipment is a through shipment to a known final destination. We are revising the definition of ''transloading'' to include transfers of hazardous materials from bulk to non-bulk packagings and from non-bulk to bulk packagings.

B. Unloading Incidental to Movement

The October 30, 2003 final rule defines ''unloading incidental to movement'' of a hazardous material to mean removing a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel, or, for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee and prior to the delivering carrier's departure from the consignee's facility or premises. Dow suggests that we include a definition for ''facility'' to clarify this provision.

We agree that the definition in the final rule should be clarified. There will be instances where a carrier has delivered a hazardous material to the consignee, and the carrier's responsibility for the hazardous material ceases even though the carrier may not have left the consignee's facility. For example, the carrier may drop a trailer loaded with hazardous material at one location in the facility and go to another location in the same facility to pick up a new trailer for transportation. In this case, the carrier's responsibility for the delivered shipment has ended even though the carrier has not departed from the facility. Therefore, the Dow appeal related to the definition of ''unloading incidental to movement'' adopted in the October 30, 2003 final rule is granted. In this final rule, we are modifying the definition for ''unloading incidental to movement'' to indicate that unloading incidental to movement occurs after the hazardous material has been delivered to the consignee's facility when the unloading operation is performed by carrier personnel or in the presence of carrier personnel. This is consistent with the definition adopted in the October 30, 2003 final rule for ''loading incidental to movement'' of a hazardous material. Note that, for purposes of this rulemaking, the reference to carrier personnel means the crew of the train that delivered the rail tank car to the facility.

C. Security

One appellant notes that ''Federal HazMat Law provides authority for DOT to regulate the 'safe transportation, *including security*, of hazardous materials * * * in commerce. * * * DOT's authority over hazardous materials security is no less important than its safety authority. DOT's authority in this area should be clearly stated in the rule.' '' (IME; emphasis in the original) We agree; indeed, as we noted in the notice we published extending the comment period for the NPRM (66 FR 59220), this rulemaking has a particular importance for hazardous materials transportation security. In light of continuing terrorist threats and the critical need to assure the security of hazardous materials at facilities and in transportation, a rule that specifies the applicability of the HMR to specific functions and activities and clarifies the relationship of the HMR to programs and regulations administered by ATF, EPA, and OSHA is more important than ever.

We note in this regard that § 1711 of the Homeland Security Act of 2002 (Pub. L. 107–296) amended Federal hazmat law to authorize the Secretary of Transportation to ''prescribe regulations for the safe transportation, *including security*, of hazardous material in intrastate, interstate, and foreign commerce'' and that the HMR ''shall govern safety aspects, *including security*, of the transportation of hazardous material the Secretary considers appropriate.'' (Emphasis added.) As a result, the Department of Homeland Security (DHS) and DOT share responsibility for hazardous materials transportation security. We consult and coordinate with DHS concerning security-related hazardous materials transportation regulations to assure that hazardous materials transportation security requirements are consistent with the overall security policy goals and objectives established by DHS and that the regulated industry is not confronted with differing and, perhaps, inconsistent security regulations promulgated by multiple agencies.

In consideration of the foregoing, we are granting the IME appeal concerning DOT's authority to regulate hazardous materials transportation security. In this final rule, we are revising § 171.1 in several places to reflect DOT's responsibility for hazardous materials transportation security.

IV. Appeals Denied

A. Consistency of HM–223 With Federal Hazmat Law

DGAC, Dow, and DuPont assert that the October 30, 2003 final rule is inconsistent with Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*), particularly with respect to the final rule provisions about the beginning and end points of transportation. ''Nowhere does [Federal hazmat law] even suggest that a carrier's possession of hazardous materials is the point at which DOT regulatory authority attaches. To the contrary, the HMR currently and correctly place great emphasis on the functional responsibilities and actions of hazmat employers and employees. Therefore, we petition [PHMSA] to reconsider the language and content of Section 171.8 * * * '' (DGAC)

We disagree. First, reference to carrier possession or presence at loading and unloading operations provides the most accurate, simple, and clear method for

establishing the starting and ending points of transportation in commerce. Second, DOT has gone beyond those basic definitions to regulate activities that affect safe transportation in commerce irrespective of who performs them. Contrary to appellants' claim, this approach is both functional and fully consistent with Federal hazmat law.

Congress instructed the Secretary to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' 5 U.S.C. 5103(b). It authorized the Secretary to regulate those ''transporting hazardous material in commerce'' as well as those ''causing hazardous material to be transported in commerce.'' *Id.* It defined transportation to mean the ''movement of property and loading, unloading, or storage incidental to the movement.'' 5 U.S.C. 5102(12). As we explained in the HM–223 rulemaking, these particular terms are not defined. 68 FR 61906.

That regulatory mandate places upon DOT the responsibility to determine when transportation in commerce begins, *i.e.*, what loading, unloading, and storage is incidental to the movement of hazardous materials, and what other activities impact the safe transportation in commerce. We did this in two ways.

First, we defined loading and unloading incidental to movement to be keyed to the possession or presence of the carrier. A carrier is any person that transports property in commerce (*see* § 171.8 (definition of carrier)). We defined storage incidental to movement to mean storage of the hazardous material by any person between the time the carrier takes physical possession of the material for the purpose of transporting it until the material is delivered to the destination indicated on a shipping document, package marking, or other medium. Thus, the carrier's responsibility for the hazardous material provides the most reliable method to distinguish between loading, unloading, and storage that is incidental to the movement of property in commerce and loading, unloading, and storage that is being performed for some other purpose unrelated to the movement of property in commerce. The definitions also provide clarity to regulated persons. More specifically, loading by the carrier or in the carrier's presence best represents loading that is incidental to the property's movement. Unloading by the carrier or in the carrier's presence best represents unloading that is incidental to the property's movement. And storage by any person after the carrier has taken possession of the property but before the property has been physically delivered to the destination best represents storage that is incidental to the property's movement. Put another way, because anyone who transports property in commerce is a carrier, when no carrier is present, loading or unloading of property is not associated with that property's transportation in commerce. Similarly, storage of property prior to a carrier taking possession of the property or subsequent to the carrier relinquishing possession of the property at its destination is not associated with that property's transportation in commerce. In all these circumstances, the definitions also make it plain when regulatory authority begins and ends.

This line must be drawn distinguishing loading, storage, and unloading incidental to movement from other types of loading, storage, and unloading to avoid DOT regulation of activities that do not impact safe transportation in commerce. For example, the preamble to the October 30, 2003 final rule explains that a broader definition of storage would result in DOT regulation of long-term storage operations at shipper and consignee facilities. 68 FR 61915, 61919–20. Similarly, a broader definition of unloading would result in DOT regulation of unloading that is performed after transportation has ended, such as when a rail tank car is unloaded directly into a manufacturing process by a consignee, often after being stored for a substantial period of time after delivery by a carrier. *See* 68 FR 61917. Outcomes like these would be contrary to the intent of Congress in directing DOT to promulgate regulations governing safe *transportation* of hazardous materials, while giving other agencies, such as OSHA, EPA, and ATF, regulatory authority over fixed facilities.

Second, when functions that might be performed by entities other than a carrier or outside of the carrier's presence affect the safety of the transportation of materials in commerce, they are regulated in a functional approach irrespective of who performs them. There are many areas where this approach applies, but two primary ones. First, pre-transportation functions are functions that are required to assure the safe transportation of a hazardous material in commerce, irrespective of who is performing the function. One key pre-transportation function is loading when performed by a shipper or other person in advance of a carrier taking possession of the material to transport it. Accordingly, as we explained in the rulemaking, when any person ''performs a loading function prior to the carrier's arrival * * * that function is a pre-transportation function and is subject to all applicable regulatory requirements.'' 68 FR 61909. (On the other hand, there is no similar regulation of unloading activities after transportation has ended—so-called ''post-transportation functions''—because once transportation of the property has been completed, unloading will not affect the safety of transportation in commerce.) Second, the HMR apply to packaging manufacturers and requalifiers and to packagings authorized for the transportation of hazardous materials in commerce; the packaging requirements apply to the packaging at any point, including prior to a carrier taking possession of the package for purposes of transporting it. Accordingly, contrary to the claim of the appeal, as with current law, the new rulemaking is fully consistent with Federal hazmat law and places strong emphasis on functional responsibilities.

DGAC suggests that the October 30, 2003 final rule's discussion of the relationship of the HMR to regulations promulgated by other Federal agencies such as OSHA and EPA ''completely ignores Congress' intent to ensure uniformity in regulations that impact the transportation of hazardous materials. * * * [PHMSA]'s interpretation in the preamble of HM–223 gives preeminence to OSHA and EPA regulations at the expense of hazardous materials regulatory uniformity as required under the Federal Hazardous Materials Law.'' Again, we disagree. The preamble to the October 30, 2003 final rule does not give preeminence to OSHA and EPA regulations at the expense of hazardous materials regulatory uniformity. Rather, the preamble recognizes that, in order to determine the extent to which each agency's regulations apply to specific situations, we must determine Congressional intent as expressed in all of the statutes that provide for Federal and non-Federal jurisdiction over activities related to the life cycle of a hazardous material. The Occupational Safety and Health Act (OSH Act), which provides the statutory authority for regulatory programs administered by OSHA, the authorizing statutes for the regulatory programs administered by EPA, and the Organized Crime Control Act of 1970, which provides the statutory basis for ATF programs applicable to the safety and security of explosives, express different statutory purposes and establish different Federal-state-local government relationships. While appellants are correct that Federal hazmat law

provides for nationally uniform regulations applicable to the transportation of hazardous materials, the authorizing statutes for other agency programs for the regulation of hazardous materials may not provide for such national uniformity of regulations. Indeed, in the case of OSHA and EPA, Congressional intent is clear that non-Federal entities should be permitted to establish more stringent regulations than those promulgated by OSHA and EPA for worker and environmental protection. Taken together, the various statutes establishing hazardous materials regulatory programs in DOT, OSHA, EPA, and ATF provide for complementary regulatory programs that encompass differing, but not necessarily contradictory, Federal-state-local relationships. The provisions adopted in the October 30, 2003 final rule provide for nationally uniform regulations for the transportation of hazardous material in commerce that are consistent with Federal hazmat law and with the statutes authorizing the hazardous materials regulatory programs administered by OSHA, EPA, and ATF.

DGAC raises a concern about transport vehicles that are DOT-authorized packagings for the transportation of hazardous materials. ''Transport vehicles bearing DOT specification identification markings are instruments of commerce and should remain under the regulatory supervision of DOT at all times they are marked to indicate they meet the DOT specification requirements. Section 5104 of [Federal hazmat law] addresses representation and tampering and we are certain it applies to loading, unloading, and storage without regard to whom is physically in possession of such vehicles.'' (DGAC)

DGAC is correct that § 5104 of Federal hazmat law addresses representation and tampering. This section prohibits a person from representing that a container or package is safe, certified, or complies with the HMR unless the container or package meets all applicable HMR requirements. This section further prohibits a person from representing that a hazardous material is present in a package or on a transport conveyance unless the material is actually present. In addition, this section prohibits a person from altering, removing, or tampering with a marking, label, placard, or shipping paper description or with a package or transport conveyance used to transport hazardous material.

We do not agree that the provisions adopted in the October 30, 2003 final rule are inconsistent with § 5104 of Federal hazmat law. DGAC is correct that the prohibitions in § 5104 apply without regard to who is physically in possession of the hazardous materials package or transport conveyance at any given time. As we have stated previously, however, the definition of ''transportation in commerce'' adopted in the October 30, 2003 final rule does not mean that the provisions of Federal hazmat law or the HMR apply only when a hazardous material is actually being transported in commerce. Regulated pre-transportation functions generally occur prior to the actual transportation in commerce of a hazardous material; similarly, specification packaging requirements apply at all times a packaging is marked to indicate conformance with a packaging specification even if the packaging is not in transportation in commerce. Thus, the representation and tampering prohibitions specifically addressing hazardous materials packages or transportation conveyances in § 5104 of Federal hazmat law apply whether or not the package or transportation conveyance is in transportation in commerce at the time that tampering occurs.

For the reasons outlined above, the Dow and DGAC appeals that assert that the October 30, 2003 final rule is not consistent with Federal hazmat law are denied.

DuPont asserts that ''[PHMSA] has created new terminology with references to pre and post transportation functions that do not appear in the statute. * * * This concept is not supported by statute and represents a departure by [PHMSA] from current practices and legislative history.'' DuPont is correct that the term ''pre-transportation'' does not appear in Federal hazmat law. We disagree, however, that the concept is not supported by statute and represents a departure from current practices. The HMR currently apply to a number of activities performed before a hazardous material is transported in commerce. The October 30, 2003 final rule defines ''pre-transportation functions'' to mean activities performed prior to the transportation of a hazardous material that affect the safe transportation of the hazardous material. These activities are currently regulated under the HMR, so the definition does not represent a departure from current practices. Moreover, the definition is consistent with Federal hazmat law, which clearly recognizes the critical safety impact of activities performed in advance of transportation by persons who cause the transportation of hazardous materials in commerce. Indeed, Federal hazmat law recognizes the importance of national uniformity in these areas with a specific preemption provision applicable to state, local, and Indian tribe requirements on, among other functions: (1) The designation, description, and classification of hazardous material; (2) the packing, repacking, handling, labeling, marking, and placarding of hazardous materials; and (3) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of these documents. 49 U.S.C. 5125(b).

SPCMA appeals the definitions for ''loading incidental to movement'' and ''unloading incidental to movement'' adopted in the October 30, 2003 final rule, asserting that the definitions are inconsistent with § 5101(12) of Federal hazmat law, which defines ''transportation'' as ''the movement of property and loading, unloading, and storage incidental to the movement.'' 49 U.S.C. 5102(12). ''DOT infers that the descriptor phrase 'incidental to movement' applies to 'movement,' 'loading,' and 'unloading.' We believe that the descriptor phrase 'incidental to movement' applies only to 'storage.' '' (SPCMA) This issue was discussed in detail in the preamble to the October 30, 2003 final rule (68 FR 61914). SPCMA offers no new information to support its view beyond its stated belief; therefore, the appeal is denied.

B. Relationship of HMR to OSHA, EPA, and ATF Requirements

Several appellants raise concerns about the explanations offered in the preamble to the October 30, 2003 final rule concerning the relationship of the HMR to requirements applicable to hazardous materials promulgated by OSHA, EPA, and ATF. The October 30, 2003 final rule indicated that persons who perform regulated functions under the HMR and facilities at which such functions are performed may be subject to applicable standards and regulations of other Federal agencies, such as OSHA regulations applicable to physical structures, EPA regulations for risk management and community right-to-know, and ATF regulations concerning the handling of explosives.

DGAC suggests that ''the way to give effect to all of the enabling statutes (EPA, OSHA, and DOT) is to recognize, for example, that state OSHA regulations apply to workers in many different industries, many of which are unrelated to transportation. These regulations may be more stringent in any given state; however, where they apply to transportation functions they

must remain consistent with the hazardous materials regulations. Under this statutory construction scheme, OSHA's regulations applicable to construction workers may vary from state-to-state; however, those regulations as applied to transportation workers must be uniform and not conflict with the hazardous materials regulations.'' (DGAC) We agree that non-Federal requirements applicable to hazardous materials pre-transportation or transportation functions must be consistent with the HMR. Indeed, as we stated several times in the preamble to the October 30, 2003 final rule, a non-Federal requirement governing pre-transportation or transportation functions or a non-Federal requirement applicable to the design, construction, maintenance, repair, and requalification of packagings used to transport hazardous materials in commerce may be preempted if the requirement fails the preemption criteria in Federal hazmat law. We also note that, separate from the preemption criteria in 49 U.S.C. 5125, a non-Federal requirement affecting transportation, including the transportation of hazardous materials, may also be preempted under the commerce clause of the United States Constitution or other statutes, such as 49 U.S.C. 20106, 31141. For example, section 20106 provides that:

> Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters, prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order—
>
> (1) is necessary to eliminate or reduce an essentially local safety or security hazard;
>
> (2) is not incompatible with a law, regulation, or order of the United States Government; and
>
> (3) does not unreasonably burden interstate commerce.

We disagree with the appellant, however, that Federal hazmat law precludes other Federal agencies or their state counterparts from regulating transportation workers who may perform functions regulated under the HMR. As discussed in detail in the preamble to the October 30, 2003 final rule, the HMR may regulate the performance of a pre-transportation or transportation function under the HMR; however, OSHA standards may address the protective measures that must be in place to ensure the safety of the person performing the pre-transportation or transportation function (68 FR 61924–31). Both DOT and OSHA are regulating functions or activities as specified in each agency's respective authorizing statutes. Federal hazmat law requires that regulations governing the performance of pre-transportation functions regulated by DOT must be consistent across jurisdictional lines; the OHSA Act permits states or localities to impose more stringent requirements for worker protection than are specified in OSHA standards.

It is important to note that we have well-established relationships with EPA, OSHA, and ATF and consult frequently about jurisdictional issues. The discussions of these relationships in the October 30, 2003 final rule reflect determinations made over a number of years as to the extent of each agency's authority over hazardous materials at facilities. The October 30, 2003 final rule does not break new ground in this area nor does it change these long-standing determinations; rather it explains each agency's regulatory authority and provides guidance for the regulated industry on each agency's jurisdiction and areas of overlapping jurisdiction.

In its appeal, IME asks us to make a specific determination as to the preeminence of the HMR over long-standing OSHA standards applicable to transportation functions that appear to conflict with the HMR. IME cites OSHA regulations for materials classification, placarding, labeling, and incident reporting. As we noted in the preamble to the October 30, 2003 final rule, it is not appropriate for DOT to attempt to clarify the applicability of other Federal agencies' statutes or regulations to particular functions or activities. OSHA frequently consults with us as to the applicability of the HMR to specific functions and generally defers to DOT on questions related to the transportation of hazardous materials. However, questions as to the applicability of EPA, OSHA, or ATF standards and regulations and suggestions for revising or updating EPA, OSHA, or ATF standards and regulations should be directed to the appropriate EPA, OSHA, or ATF office.

For the reasons outlined above, the DGAC, IME, SPCMA, and USWAG appeals of the October 30, 2003 final rule concerning the relationship of the HMR to standards and regulations promulgated by EPA, OSHA, and ATF are denied.

C. Preemption of State/Local Laws and Regulations

A number of appellants express concern that the October 30, 2003 final rule permits non-Federal jurisdictions to impose non-uniform, inconsistent, and contradictory requirements on hazardous materials transportation. For example, one appellant asserts that, under the October 30, 2003 final rule, ''[t]he [HMR] will apply when the tank cars are loaded and during transportation, but the proposed rules would allow states or localities to assume regulatory jurisdiction—perhaps even to the point of banning shipments—once they are placed on industry tracks. * * * [T]he same tank car on the same industry track could be subject to DOT jurisdiction one day and local jurisdiction the next. * * * [Subjecting rail tank cars to regulation by multiple jurisdictions] can lead to nothing but confusion, operational difficulty, and extra cost.'' (AGP)

Another appellant is similarly concerned about the potential for non-uniform regulatory requirements. ''The final rule would seem to say a [rail car] is DOT-covered when filled, but not before. It also would seem to say [a rail car] stops being DOT-covered after being filled, but before a shipping document is created, and yet comes back into the sphere of DOT preemption when that paperwork is generated. This seems illogical to us, and we are not certain that this is what the agency actually intended. * * * When DOT withdraws from the regulatory field, local or other Federal rules will click on; then when DOT's system reengages it apparently will preempt those rules.'' (Eastman)

Appellants appear to have misunderstood the October 30, 2003 final rule. First, it is important to note that DOT specification packagings, such as rail tank cars, cargo tank motor vehicles, and cylinders, are subject to DOT regulation at all times that the packaging is marked to indicate that it conforms to the applicable specification requirements. Thus, each DOT specification rail tank car must be designed and constructed in accordance with applicable requirements and must be maintained and repaired in accordance with applicable requirements. These requirements apply at all times that the rail tank car is marked to indicate that it complies with DOT specification requirements, whether the car is empty or loaded with hazardous materials and whether the car is awaiting pickup by a carrier, in the carrier's possession, or delivered to a consignee. Under the Federal hazmat law, a non-Federal entity may impose

requirements on DOT specification packagings only if those requirements are substantively the same as the DOT requirements. 49 U.S.C. 5125(b)(1)(E). Thus, a rail tank car is ''DOT-covered'' for purposes of conformance with DOT specification requirements.

Second, the October 30, 2003 final rule codifies in the HMR long-standing, well-established administrative determinations as to the applicability of the HMR to specific functions and activities. Thus, under the October 30, 2003 final rule, the HMR apply, as they do now, to pre-transportation functions such as filling a rail tank car and preparing shipping papers. Further, under the October 30, 2003 final rule, the HMR apply, as they do now, to transportation functions, which are defined as loading incidental to movement, unloading incidental to movement, and storage incidental to movement. It is not correct that a rail car is ''DOT-covered'' when filled; rather, as is currently the case, the filling or loading operation is subject to any applicable HMR requirements and is subject to the preemption provisions of Federal hazmat law. It is not correct that a rail car ''stops being DOT-covered'' after being filled; rather, as is currently the case, storage of a filled or loaded rail car prior to its pick-up by a rail carrier is not storage incidental to movement and so is not subject to HMR requirements applicable to such storage. It is not correct that a rail car ''comes back into the sphere of DOT preemption when [a shipping paper] is created''; rather, as is currently the case, the creation of a shipping paper is a regulated function that must be performed in accordance with the HMR and is subject to the preemption provisions of § 5125 of Federal hazmat law. Moreover, as already noted, a non-Federal safety law or regulation affecting the transportation of hazardous materials may be preempted under 49 U.S.C. 20106. *CSX Transp. Inc.* v. *Public Util. Comm'n of Ohio,* 901 F. 2d 497 (6th Cir. 1990) cert. denied, 498 U.S. 1066 (1991).

A more accurate description of the regulations that apply to a rail tank car used to transport hazardous materials follows:

1. The rail tank car is designed, constructed, maintained, and repaired in accordance with all applicable DOT specification requirements and is marked to indicate that it conforms to these requirements. As is currently the case, the specification requirements apply at all times that the marking is in place, including when the car is empty, during any loading or unloading operations, and while the car is in storage whether or not such storage meets the definition of ''storage incidental to movement.'' PHMSA cannot envision any circumstance where the broad preemptive scope of 49 U.S.C. 20106 would allow a non-Federal entity to regulate the design, construction, maintenance, or repair of a DOT specification rail tank car in any manner.

2. As is currently the case, functions performed to prepare a rail tank car for transportation in commerce must be performed in accordance with applicable DOT specification requirements. Such functions include, but are not limited to, classifying the hazardous material, filling the rail tank car, securing closures on the rail tank car, placing placards on the rail tank car, and preparing shipping papers for the shipment. These pre-transportation functions are regulated under the HMR irrespective of the entity performing the function. In the absence of a local safety or security hazard, 49 U.S.C. 20106 preempts any non-Federal regulation of these pre-transportation functions and, even if such a local safety or security hazard exists, 49 U.S.C. 5125 provides that (unless there is a waiver of preemption) a non-Federal entity may not impose requirements for pre-transportation functions that are not substantively the same as the DOT requirements. Persons performing pre-transportation functions and facilities at which pre-transportation functions are performed may be subject to Federal requirements applicable to worker or environmental protection; non-Federal entities may impose more stringent worker or environmental protection requirements so long as those requirements do not interfere or conflict with the performance of the pre-transportation function that is regulated under the HMR or with the specification requirements applicable to the packaging that will be used for the shipment. Persons performing pre-transportation functions and facilities at which pre-transportation functions are performed may also be subject to Federal requirements applicable to the handling and storage of explosives at fixed facilities.

3. As is currently the case, storage of a filled rail tank car at the consignor's facility while awaiting pick-up by a rail carrier is not subject to HMR requirements applicable to such storage. Note, however, that specification requirements applicable to the rail tank car continue to apply during such storage. Note as well that, as discussed in the October 30, 2003 final rule, for purposes of enforcement of the HMR, we would expect the person offering the rail tank car for transportation to be able to demonstrate compliance with all applicable pre-transportation requirements at the time the hazardous material is staged for pick-up by a carrier and the consignor or his agent signs the shipping paper. Even in the absence of a signed shipping paper, the offeror may be responsible for assuring compliance with specific pre-transportation requirements if other factors indicate that a particular pre-transportation activity has been completed. (See discussion at 68 FR 61911–61912. For a more complete discussion of offeror responsibilities under the HMR, see the NPRM published September 24, 2004, 69 FR 57245.) Non-Federal entities may impose more stringent worker or environmental protection requirements applicable to such storage so long as those requirements do not interfere with the performance of pre-transportation functions regulated under the HMR or affect the DOT specification packaging requirements that apply to the rail tank car.

4. As is currently the case, once a rail tank car is picked up by a rail carrier for transportation, all applicable HMR requirements apply to such transportation, including while the rail tank car is temporarily stored after its pick-up by the rail carrier and prior to its delivery to the consignee. Non-Federal entities may not impose requirements on the transportation in commerce of a rail tank car that are preempted under the criteria in 49 U.S.C. 5125 and 20106.

5. As is currently the case, once the rail tank car is delivered to the consignee, storage of the car on private track or private siding is not subject to regulation under the HMR. Note, however, that specification requirements applicable to the rail tank car continue to apply during such storage. Non-Federal entities may impose more stringent worker or environmental protection requirements applicable to such storage so long as those requirements do not affect the DOT specification packaging requirements that apply to the rail tank car.

6. Consignee-conducted rail tank car unloading operations are not subject to regulation under the HMR. Non-Federal entities may impose more stringent worker protection or environmental protection requirements applicable to such unloading operations so long as those requirements do not affect the DOT specification packaging requirements that apply to the rail tank car.

7. As is currently the case, for consignees who ship empty rail tank cars that contain a residue of a hazardous material, storage of such tank cars on private track is not subject to regulation under the HMR. Non-Federal entities may impose more stringent worker protection or environmental protection requirements applicable to such storage so long as those requirements do not affect the DOT specification packaging requirements that apply to the rail tank car.

8. As is currently the case, for residue shipments in rail tank cars, functions performed to prepare the rail tank car for transportation in commerce must be performed in accordance with applicable DOT specification requirements. Such functions include classifying the hazardous material, securing closures on the rail tank car, placing placards on the rail tank car, and preparing shipping papers for the shipment. These pre-transportation functions are regulated under the HMR irrespective of the entity performing the function. In the absence of a local safety or security hazard, 49 U.S.C. 20106 preempts any non-Federal regulation of these pre-transportation functions and, even if such a local safety or security hazard exists, 49 U.S.C. 5125 provides that (unless there is a waiver of preemption) a non-Federal entity may not impose requirements for pre-transportation functions that are not substantively the same as the DOT requirements. Persons performing pre-transportation functions and facilities at which pre-transportation functions are performed may be subject to Federal requirements applicable to worker or environmental protection; non-Federal entities may impose more stringent worker or environmental protection requirements so long as those requirements do not interfere with the performance of the pre-transportation function that is regulated under the HMR.

Appellants ''acknowledge that there are Federal, state, and local laws and regulations in force that may affect the transportation of hazardous materials. We are concerned that * * * statements in the final rule * * * may be read as encouraging the promulgation of hundreds of constraints and conflicting requirements contrary to the precept that our nation cannot function effectively without a national system of transportation regulation.'' (DGAC) We do not agree that the October 30, 2003 final rule will encourage non-Federal entities to enact ''hundreds of constraints and conflicting requirements'' applicable to the transportation of hazardous materials in commerce. The October 30, 2003 final rule does not impose new preemption standards; rather, it restates the current preemption standards in the Federal hazmat law and clarifies their applicability to certain functions and operations. PHMSA will continue to apply the preemption standards in Federal hazmat law on a case-by-case basis, considering the effect of a non-Federal requirement on the transportation of hazardous materials in commerce as we make our determinations. While PHMSA's determinations under 49 U.S.C. 5125(d) consider only the preemption criteria in Federal hazmat law, non-Federal requirements that fail the preemption criteria in any Federal law are preempted.

DGAC notes that ''[PHMSA] failed to provide a list of past [preemption] findings under the obstacle test'' and asks us to include such a list in the preemption paragraph of § 171.8. We do not agree that this is necessary. PHMSA's Office of the Chief Counsel has included on its Web site at *http://rspa-atty.dot.gov/* a detailed index to preemption of state and local laws and regulations under Federal hazmat law with links to individual preemption determinations as published in the **Federal Register.**

For the reasons outlined above, the AGP, ADM, DGAC, DuPont, Eastman, IME, SPCMA, and USWAG appeals related to preemption of non-Federal requirements are denied. In deference to appellants' concerns, however, in this final rule, we are revising § 171.1(f) to place the preemption standards first in the section and to add a clarification that non-Federal entities may impose regulations on functions that are not covered by the HMR or Federal hazmat law, except where PHMSA has specifically determined that the regulation of the hazardous materials-related function is not necessary. Appellants correctly note that PHMSA has in some cases determined that safety or security regulations may not apply to all hazardous materials or to specific types of shipments. For example, PHMSA has determined that escorts are required for certain types of radioactive materials shipments, but that escorts are not required for other types of hazardous materials shipments. Thus, non-Federal escort requirements applicable to materials for which PHMSA has determined that escorts are not necessary are preempted (see Preemption Determination 20, 66 FR 29867, June 1, 2001). Generally, non-Federal requirements may be subject to preemption when PHMSA determines that no such regulations may be imposed at all.

D. Storage Incidental to Movement

Consistent with long-standing interpretations and administrative determinations issued by the agency, the October 30, 2003 final rule defined ''storage incidental to movement'' for purposes of applicability of the HMR to mean storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document, such as a shipping paper, bill of lading, waybill, or similar document (see discussion at 68 FR 61919). Storage of hazardous materials at an offeror's facility prior to a carrier taking physical possession of the shipment is not subject to regulation under the HMR nor is storage at a consignee facility after the shipment has been delivered.

In its appeal letter, IME notes that ''DOT does not describe what it regulates when packages are stored incidental to movement * * * DOT should correct this oversight. For example, does DOT's regulatory authority control the number of vehicles or the separation distance that must be maintained between these transport vehicles? Does DOT's regulatory authority control the amount or kind of hazardous materials that may be in storage at the same location at the same time? Does DOT regulatory authority control the physical security of packages stored incidental to transportation? * * * A clear statement of DOT 'storage authority' will not 'preempt' other Federal agency jurisdictions, but it will, with one exception, trigger provisions of statutes implemented by these agencies * * * that exclude 'transportation' where DOT has exercised its authority from the applicability of their rules.''

The HMR apply to hazardous materials stored incidental to movement. Such storage is a transportation function as that term is defined in the final rule. Hazardous materials stored incidental to movement are subject to specific HMR requirements applicable to such storage. For example, such hazardous materials must be accompanied at all times by appropriate shipping documentation, including emergency response information and an emergency response telephone number in accordance with Subparts C and G of Part 172. Further, package markings, labels, and placards

required under Subparts D, E, and F of Part 172 must remain on the packages or transport vehicles throughout the time that they are stored incidental to movement. In addition, hazardous materials stored incidental to movement are subject to the requirements for security plans in Subpart I of Part 172. The security plan must include an assessment of possible transportation security risks and appropriate measures to address the assessed risks. At a minimum, a security plan that covers hazardous materials stored incidental to movement must include elements related to personnel security and unauthorized access. The HMR specify segregation and stowage requirements for hazardous materials in or on a transport vehicle, but do not currently address the amounts or types of hazardous materials that may be stored at one time in one location at a transportation facility. However, as noted below, we are initiating a rulemaking to determine whether more specific requirements applicable to materials stored incidental to movement are necessary.

Two appellants ask us to include in the definition of ''storage incidental to movement'' shipments that are awaiting pick-up by a carrier. ''At what point after [loading] does [PHMSA] anticipate storage * * * to begin? Having a filled packaging with the intent to ship should remain under HMR instead of being subject to different regulations pending the unpredictable arrival of a carrier.'' (DuPont) Similarly, ''DOT needs to clarify the point at which 'loading' ends and storage not incidental to transportation begins. * * * Current industry practice with regard to these activities are dictated by time and space and can result in situations where the regulations of the vehicle and its partially loaded contents could shift between regulatory agencies and requirements. For example, if during the course of loading a vehicle, loading is stopped for a meal break, for a rest break, for a fire drill, has the vehicle transitioned into non-transportation storage? If a vehicle is left partially or fully loaded with explosives overnight on the shipper's property pending the arrival of the carrier, as long as the vehicle is in conformance with 49 CFR 397.5(b), is this storage beyond DOT purview? * * * Or do DOT's rules contemplate a transitional period during which hazardous materials are 'staged' for loading?'' (IME)

As defined in the final rule, ''storage incidental to movement'' does not include hazardous materials stored at a shipper's facility prior to a carrier taking possession of the shipment for purposes of transporting it. Thus, as a general rule, storage of a hazardous material after it is loaded into a freight container or transport vehicle and prior to a carrier taking possession of the material is not subject to HMR requirements applicable to storage incidental to movement. Clearly, under the scenario described by IME where the loading operation is interrupted for brief periods of time for a meal or rest break, the hazardous materials being loaded do not ''transition'' into non-transportation storage. However, loaded vehicles that are stored overnight or for a period of days awaiting pick-up by a carrier are not considered to be stored incidental to movement and, thus, are not subject to HMR requirements applicable to such storage. Note, however, that loaded vehicles for which applicable pre-transportation functions have been completed and that are awaiting pick-up by a carrier are subject to HMR regulations applicable to such pre-transportation functions. Hazardous materials loaded into such vehicles must conform to applicable segregation and blocking and bracing requirements. Further, such vehicles must be marked, labeled, and placarded in accordance with HMR requirements, and shipping documentation and emergency response information must conform to applicable HMR requirements. Such vehicles may be used by DOT enforcement personnel to identify violations of the HMR with respect to the performance of pre-transportation functions applicable to the shipment.

Note that, while shipments stored at a consignor's facility awaiting pick up by a carrier are not subject to HMR requirements applicable to such storage, non-Federal requirements applicable to such shipments may be limited. For example, a non-Federal requirement that imposed differing packaging, marking, or labeling regulations during the time that the shipment was staged for pick-up by a carrier would likely be preempted under Federal hazmat law.

We note concerning the IME scenarios described in its appeal letter that the regulations at 49 CFR 397.5 address a motor carrier's responsibility for attendance and surveillance of explosives and other types of hazardous materials during transportation. Generally, under 49 CFR 397.5, a motor vehicle that contains a Division 1.1, 1.2, or 1.3 explosive must be attended at all times by the driver of the motor vehicle or by the motor carrier's qualified representative. Paragraph (b) of 49 CFR 397.5 excepts motor vehicles from this attendance requirement under certain conditions. Because the requirements of 49 CFR 397.5 establish a motor carrier's responsibility for attendance and surveillance, they are not relevant to the situation described by IME where a shipper is preparing explosives for transportation and a carrier has not yet taken possession of the explosives shipment. Questions concerning the applicability of 49 CFR 397.5 to specific persons and operations should be directed to the Federal Motor Carrier Safety Administration.

Both DuPont and IME ask us to consider a modification to the definition of ''storage incidental to movement'' to accommodate shipments staged for pick-up by a carrier or hazardous materials staged for loading prior to pick-up by a carrier. Broadening the definition of ''storage incidental to movement'' in the manner requested is beyond the scope of this rulemaking; therefore, the DuPont and IME appeals concerning this issue are denied. As indicated above, however, while shipments stored at a consignor's facility awaiting pick up by a carrier are not subject to HMR requirements applicable to such storage, non-Federal requirements applicable to such shipments may be limited. For example, a non-Federal requirement that imposed differing packaging, marking, or labeling regulations during the time that the shipment was staged for pick-up by a carrier could be subject to preemption under Federal hazmat law under both the covered subject and dual compliance tests.

We note in this regard that we are initiating a rulemaking to address hazardous materials storage issues and, specifically, storage issues related to the transportation of explosives in commerce. We expect to address questions concerning aggregation and segregation of hazardous materials, facility safety and security requirements, attendance and surveillance, and similar issues.

E. Unloading Incidental to Movement

Several appellants ask us to reconsider our definition of ''unloading incidental to movement'' in the October 30, 2003 final rule. ''[PHMSA] should reconsider its definition of *unloading incidental to movement* for bulk. An individual's employer or occupation should not dictate whether the HMR apply to functions being performed. * * * [PHMSA should] apply consistent logic to unloading and make unloading performed by a shipper post-transportation. It is equally important to have nationally uniform regulations over both 'pre-transportation' and 'post-transportation' functions to ensure safety and the efficient transportation of hazardous materials.'' (Dow)

This issue was addressed in detail in the preamble to the October 30, 2003 final rule (see 68 FR 61916–61919). Appellants restate the points offered in their comments to the HM–223 NPRM, but offer no new information to support their position that PHMSA should regulate unloading operations conducted by consignees after a carrier has delivered a hazardous material shipment. As we stated in the preamble to the October 30, 2003 final rule, we have never promulgated regulations applicable to ''post transportation functions'' (except for rail tank car unloading operations); the HMR are promulgated under the mandate in Federal hazmat law that the Secretary ''prescribe regulations for the safe *transportation* of hazardous material in intrastate, interstate, and foreign commerce'' (49 U.S.C. 5103(b); emphasis added.) Congress recognized that post-transportation activities should be regulated by Federal agencies, such as OSHA, EPA, and ATF, that generally have authority to regulate non-transportation activities involving hazardous materials. Congress further recognized that non-transportation operations need not be governed by one set of nationally uniform regulations in both the OSH Act and the various statutes that authorize EPA's programs by explicitly permitting non-Federal entities to impose requirements for worker or environmental protection that are more stringent than Federal requirements.

An appellant suggests that an individual's ''employer or occupation'' is not relevant to the issue of whether the HMR should apply to a particular function or activity. Again, this issue was addressed in detail in the October 30, 2003 final rule (68 FR 61917–61918). The appellant restates comments made in response to the HM–223 NPRM, but offers no new information to support its opinion.

One appellant notes that ''[o]ver the years DOT has issued a number of exemptions from the requirements for disconnecting the loading lines of a tank car when unloading is disrupted under specific conditions. * * * The issuance of these exemptions is evidence that the intent of DOT has been to regulate the loading and unloading of [tank cars] whether on railroad tracks or private siding.'' (SPCMA) SPCMA is correct that until publication of the October 30, 2003 final rule, the HMR included detailed requirements for consignees conducting rail tank car unloading operations. As we explained in detail in the preamble to the October 30, 2003 final rule, however, the provisions in the final rule applicable to rail tank car unloading stem from changes in the way rail tank cars are used in manufacturing processes and are consistent with PHMSA's current regulation of cargo tank unloading operations (68 FR 61917–61918). The appellant offers no new information to support its view that the HMR should continue to apply to rail tank car unloading operations.

For the reasons outlined above, the Akzo, ADM, Dow, DuPont, Eastman, SPCMA, Sulphur Institute, and USWAG appeals related to the definition of ''loading incidental to movement,'' except as discussed earlier in this preamble under the ''Appeals Granted'' section, are denied.

With respect to unloading operations, Dow suggests that we define ''connected to a manufacturing process'' to mean ''a container used for the transportation of hazardous materials that is directly connected to a manufacturing process without intermediate storage.'' Because we do not use the phrase ''connected to a manufacturing process'' in the revised text of the regulations adopted in the October 30, 2003 final rule, a definition is not necessary. Therefore, this appeal is denied. However, interested persons should note that the definition suggested by Dow is, in fact, consistent with the discussion of rail tank car unloading operations in the preamble to the October 30, 2003 final rule (*see* 68 FR 61917) and was what we intended when we used the phrase ''unloading into a manufacturing process.''

F. Definition of ''Handling''

One appellant is concerned that the October 30, 2003 final rule does not include a definition for ''handling.'' ''Congress has provided DOT statutory authority over the 'handling' of hazardous materials in transportation, including incidental loading, unloading, and storage, at facilities and by hazmat employees. * * * It is unclear how DOT can completely explain the reach of its jurisdiction without the Department's interpretation of its handling authority. This oversight should be addressed.'' (IME) IME is correct that neither the NPRM published under this docket nor the October 30, 2003 final rule define the term ''handling.'' Because this issue was not previously addressed in either the NPRM or the final rule, IME's appeal with respect to the definition of ''handling'' is beyond the scope of this rulemaking and is, therefore, denied.

G. HMR Applicability to Facilities

Several appellants suggest that the October 30, 2003 final rule's discussion of the applicability of the HMR to facilities at which hazardous materials are prepared for transportation or stored incidental to movement in transportation is inconsistent with Federal hazmat law and with HMR requirements for security plans. ''At 49 U.S.C. 5106, Congress granted [DOT] statutory jurisdiction over ''facilities used in handling and transporting' hazardous material. * * * While DOT has made a point of not exercising its authority under § 5106, there can be no doubt that the Department's statutory jurisdiction extends to fixed facilities and hazmat employees without regard to who employs them.'' (IME) Similarly, ''[In HM–223, PHMSA] clearly rejected the arguments that [PHMSA]'s jurisdiction should extend to fixed facility operations, other than 'pre-transportation' and 'transportation functions.' This artificial limit to [PHMSA]'s jurisdiction, however, is inconsistent with the final rule under HM–232, which requires a 'security plan' for any facility that ships a placarded load. HM–232 contains many requirements applicable to facilities that do not fall under the definition of 'pre-transportation functions' or 'transportation functions.' * * * Consequently, there is an inherent conflict between HM–223 and the requirements of HM–232 and any other requirement in the HMR that cannot be labeled as a 'pre-transportation function' or a 'transportation function', of which there are many.'' (DGAC)

We do not suggest in the October 30, 2003 final rule that functions that fall outside the definitions of ''pre-transportation function'' or ''transportation function'' are not regulated under the HMR. DGAC correctly notes that there are a number of requirements in the HMR that are neither pre-transportation nor transportation functions ''the requirements applicable to specification packagings are one example; training requirements for hazmat employees are another. Nor do we suggest in the October 30, 2003 final rule that DOT does not have the authority to prescribe regulations applicable to facilities. Indeed, where we have found it to be necessary to improve hazardous materials transportation safety or security, we have adopted regulations specifically applicable to facilities at which hazardous materials are handled during transportation or in preparation for transportation, most notably, as DGAC again correctly notes, with respect to security plans. Rather, the October 30, 2003 final rule says that, insofar as worker protection, environmental protection, or the handling of explosives are concerned, OSHA, EPA, and ATF regulations may

apply to facilities at which functions regulated under the HMR are performed. This does not mean that neither Federal hazmat law nor the HMR apply to hazardous materials facilities, only that the regulated community should be aware that OSHA, EPA, and ATF regulations cover facilities at which functions regulated under the HMR are performed.

For the reasons stated above, the DGAC and IME appeals concerning the alleged inconsistency of the October 30, 2003 final rule with requirements in the HMR applicable to facilities or other than pre-transportation or transportation functions are denied.

Dow suggests that there is an apparent inconsistency in the way that the October 30, 2003 final rule discusses the applicability of the HMR to operations that occur solely within a facility where public access is restricted. Dow notes that the rule makes the general statement that rail and motor vehicle movements that take place solely within a contiguous facility boundary where public access is restricted are not subject to the HMR; however, the rule also imposes some minimal requirements on loading and unloading operations not otherwise subject to regulation under the HMR. Dow suggests that ''the new regulations create questions and inconsistencies that introduce the potential for other regulatory agencies to step in and create regulations that may conflict with those of the HMR.'' We disagree. The specific area where the HMR apply to operations at a facility is for loading and unloading of rail tank cars. The requirement, as adopted in the October 30, 2003 final rule, is for rail cars to be secured against movement or coupling. As explained in the preamble to the October 30, 2003 final rule, this requirement is necessary to protect train and engine crews operating within a shipper or consignee facility. The requirement is consistent with OSHA standards applicable to rail tank car loading and unloading. It is included in the HMR to assure that shippers and consignees are aware of their obligation to have procedures in place to protect train and engine crews operating at their facilities.

H. Training

Several appellants assert that the provisions of the October 30, 2003 final rule will result in significantly increased training costs for hazmat employers. ''[C]ompany trainers responsible for training employees are not always limited to just one locality/jurisdiction. Therefore, trainers will need a clear understanding a variety of requirements [sic] depending on the location of the fixed facility. This could increase costs since multiple training programs would have to be created and maintained * * *.'' (Dow) Similarly, ''there is the opportunity for the application of multiple sets of regulations, depending on the circumstances * * * that will cause great confusion and significant training difficulties. This will have an adverse impact on safety * * *.'' (DuPont)

Industry's concern about the potential for increased training costs appears to stem from a misunderstanding of the October 30, 2003 final rule. As explained a number of times in the preamble to that final rule, the provisions adopted for the most part merely restate and clarify long-standing administrative determinations as to the applicability of the HMR to certain functions and activities related to the transportation of hazardous materials in commerce. Under the October 30, 2003 final rule, the HMR apply, as they do now, to pre-transportation and transportation functions. OSHA, EPA, and ATF regulations apply, as they do now, to operations at fixed facilities and to the facilities themselves. Non-Federal governments, as they do now, may impose more stringent requirements than OSHA and EPA. Thus, the October 30, 2003 final rule will not result in increased training costs; company training programs should already include OSHA, EPA, ATF, and non-Federal government requirements applicable to individual facilities. Indeed, the October 30, 2003 final rule should result in decreased training costs since companies will no longer be required to train employees on rail tank car unloading requirements in both the HMR and OSHA standards. Therefore, the Dow and DuPont appeals related to increased training costs are denied.

I. Transloading Versus Repackaging

One appellant asks for clarification of HMR applicability to ''transloading'' and ''repackaging,'' noting that ''repackaging'' is not defined in the October 30, 2003 final rule. Two other appellants ask us to revise the definition of ''transloading'' adopted in the October 30, 2003 final rule to include transfers of hazardous materials from bulk to non-bulk packagings and *vice versa.*

As noted above, transloading is a transportation operation involving a transfer of a hazardous material from one packaging to another for the purpose of continuing the movement of the hazardous material in commerce. In order to meet the definition for ''transloading,'' the hazardous material must clearly be consigned to the facility at which the transloading operation is to occur for the sole purpose of transferring the hazardous material to or from a bulk packaging; in other words, the ultimate destination of the hazardous material must be known at the time that the material is delivered to the facility and that destination must be indicated on the shipping documentation accompanying the shipment.

The term ''repackaging'' refers broadly to the relatively common practice of removing a hazardous material from the package in which it is received at a consignee's facility and placing it into another type of packaging prior to reshipping the hazardous material. The ultimate destination of the hazardous material is not known when the material is first delivered to the consignee's facility. Typically, the consignee will repackage the hazardous material for resale. Repackaging is subject to HMR requirements as a pre-transportation function—thus, the packaging selected must conform to applicable HMR requirements, and labels and marks must be placed on the packaging in accordance with applicable HMR requirements. Unlike transloading, repackaging is not a transportation function—because the ultimate destination of the material is not known when the hazardous material is delivered to the facility at which the material will be repackaged, transportation in commerce ends with that delivery. Transportation begins when a carrier picks up the repackaged hazardous material for transportation to a subsequent consignee.

J. Miscellaneous Issues

Security. One appellant asks about the relationship of the provisions of the October 30, 2003 final rule to the applicability of security requirements in Subpart I of Part 172 of the HMR. ''One aspect of HM–223 is that when the DOT safety controls are deemed to stop, DOT's new security controls also stop. We have yet to decipher what that means in the context of HM–232, our written security plan, and our employee training related to that plan, with respect to both empty and filled hazmat cars on our property.'' (Eastman)

The security plan requirements in Subpart I of Part 172 apply to hazardous materials being prepared for transportation in commerce, in addition to the actual transportation of hazardous materials. Persons who offer certain hazardous materials for transportation in commerce must develop and implement security plans that cover personnel, unauthorized access, and en route security. (These requirements

apply to shipments of hazardous materials in amounts that require placarding, to hazardous materials in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids, and to select agents and toxins regulated by CDC.) The security plan requirements are performance standards and deliberately provide for a substantial degree of flexibility concerning specific measures that should be included in the plan. Generally, however, we would expect an offeror's security plan to address the security of covered hazardous materials during their preparation for transportation and after completion of such preparation prior to the shipment being picked up by a carrier. Similarly, we would expect that empty packagings or transport conveyances (such as rail tank cars) that are located at the offeror's facility and will be used for the transportation of hazardous materials covered by the security plan would also be covered by an offeror's security plan to minimize the possibility that someone could tamper with the packagings or transport conveyances in a way that could impair their security during transportation. A hazardous materials transportation security plan need not cover hazardous materials stored at a facility for use at the facility or prior to their preparation for transportation; similarly, a security plan need not cover hazardous materials delivered to a facility for use at the facility.

MOTS. One appellant is concerned about the effect of the definitions adopted in the October 30, 2003 final rule on the exception authorized for materials of trade (MOTS) under § 173.6. The final rule does not limit the scope or otherwise change the applicability of the HMR exception for MOTS.

Consistency with existing policy decisions and determinations. One appellant asserts that the October 30, 2003 final rule implied ''that there are some provisions of the final rule that are inconsistent with [PHMSA]'s prior decisions, but the regulated community is left on its own to determine which administrative policies and decisions have changed and which have not (with the exception of PHMSA acknowledgement of its reversal of policy on the unloading and storage of tank cars). This is not a practical, reasonable or proper manner in which to alter a prior agency decision and certainly is not in such a significant and controversial jurisdictional rule as HM–223.'' (USWAG) The appellant appears to have misunderstood the October 30, 2003 final rule. The preamble to that rule is quite detailed in explaining that, except for the applicability of the HMR to rail tank car unloading, the provisions of the final rule concerning the applicability of the HMR to specific functions and activities are consistent with previously published agency decisions and determinations. Moreover, the determinations on which the October 30, 2003 final rule is based are included in the docket for this rulemaking. Contrary to the appellant's assertion, the applicability of the HMR to rail tank car unloading is the only area where we have made a determination in the October 30, 2003 final rule that differs from previously published determinations. (The appellant's reference, quoted above, to tank car storage is not correct. The provisions of the October 30, 2003 final rule concerning the applicability of the HMR to the storage of rail tank cars are consistent with both previously published agency determinations and with the Federal Railroad Administration's regulation of railroad operations.)

Movement of rail tank cars. One appellant suggests that the provisions in the October 30, 2003 final rule applicable to the movement of rail tank cars are based on our misunderstanding of the way that tank cars containing chlorine move to and from their final destination. ''In general, railroad tank cars containing chlorine are located on private track at repackaging and manufacturing facilities. The lead car, i.e, the first car in the line, is unloaded first. In order to move another car into place for unloading, the entire line of loaded tank cars is moved back on railroad track from the private siding. The empty car is pushed forward on carrier track, uncoupled, and the remaining cars are moved back onto private siding. The empty car is returned to the chlorine manufacturer. This process may be repeated one or more times each day. * * * Under the final regulations ''the tank cars may be subject to repeated DOT and State and local jurisdiction, depending upon their location and movement from private siding to railroad track.'' (SPCMA)

The determination in the October 30, 2003 final rule concerning the applicability of the HMR to rail cars on private track relates to storage of such rail tank cars only. The movements described by SPCMA during which rail cars may be moved from private track to carrier track for short periods of time are subject to the HMR because the movements involve track that is part of the general railroad system of transportation. (See discussion at 68 FR 61920–22.) The key to the definition of ''private track'' and, therefore, to the applicability of the HMR to operations on private track, is the devotion of that track to the sole use of some person other than the railroad. Thus, storage of rail cars on private track and movements of rail cars that occur solely on private track are not subject to the HMR; however, storage of rail cars on other than private track and movements of rail cars that occur on other than private track are subject to applicable HMR requirements. Non-Federal jurisdictions may not regulate the storage and movement of rail cars on other than private track except to the extent that such regulation meets the covered subject, dual compliance, and obstacle tests established in Federal hazmat law.

V. Corrections

In this final rule we are making the following changes to the October 30, 2003 final rule to correct inconsistencies and inadvertent errors:

1. In § 171.1(c), we are revising the definition of ''transportation in commerce'' for consistency with definitions used elsewhere in the final rule.

2. In § 174.67, we are revising the introductory text to paragraph (a) to clarify that the entire section applies to transloading operations, not just paragraph (a). In paragraphs (a)(1), (k)(1), and (k)(2), we are revising references to ''reliable employees'' and ''designated employees'' in favor of ''hazmat employees'' for consistency with terminology used throughout the HMR. In addition, we are correcting an inadvertent error that resulted in the unintentional deletion of paragraphs (m) and (n) from this section.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for Rulemaking

This final rule is published under the statutory authority in 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. To this end, in October 2003, RSPA, the predecessor agency to PHMSA, published a final rule to clarify the applicability of the Hazardous Materials Regulations (HMR) to functions and activities related to the transportation of hazardous materials in commerce. This final rule responds to appeals submitted by persons affected by the final rule and it amends certain

requirements and makes minor editorial corrections.

Clarifying the applicability of the HMR helps to eliminate confusion on the part of the regulated public, thereby facilitating compliance and enhancing hazardous materials safety and security. Clarifying the applicability of the HMR also has the beneficial effect of reducing or eliminating confusion over the applicability of regulations promulgated by other Federal agencies, such as EPA, OHSA, and ATF, that are applicable to materials also covered by the HMR. Finally, clarifying the applicability of the HMR helps states, local governments, and tribal governments to determine areas when they may regulate without being subject to preemption under Federal hazardous materials transportation law.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because of significant public interest. This final rule clarifies and corrects a final rule published under this docket on October 30, 2003. A regulatory evaluation for the October 30, 2003 final rule is in the public docket for this rulemaking. This final rule does not impose new requirements on the regulated industry; the clarifications and corrections made in this final rule do not affect the calculations of benefits and costs associated with the October 30, 2003 final rule or the conclusions about the overall impact of the final rule on the regulated community.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts state law but will not have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the consultation requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items 1–5 above and preempts state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard.

Federal hazardous materials transportation law provides at '' 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption will be 90 days from publication of this final rule in the **Federal Register**.

D. Executive Order 13175

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

E. Paperwork Reduction Act

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

F. Regulation Identifier Number (RIN)

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

G. Unfunded Mandates Reform Act

This final rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Environmental Assessment

We find that there are no significant environmental impacts associated with this final rule. An environmental assessment prepared for the October 30, 2003 final rule has been placed in the public docket for this rulemaking.

I. Privacy Act Statement

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

List of Subjects

49 CFR Part 171

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

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

■ In consideration of the foregoing, we are making the following revisions and corrections to rule FR Doc. 03–27057, published on October 30, 2003 (68 FR 61906):

PART 171—[CORRECTED]

■ 1. On page 61937, in the middle column, correct the authority citation for Part 171 to read as follows:

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

■ 2. Beginning on page 61937, in the middle column, in § 171.1, make the following revisions:

■ a. Revise the introductory text;

■ b. Remove paragraph (b)(4);

■ c. Redesignate paragraphs (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), (b)(14), and (b)(15) as (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), and (b)(14), respectively; and

■ d. Revise paragraphs (c), (f), and (g).

The revisions read as follows:

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) directs the Secretary of Transportation to establish regulations for the safe and secure transportation of hazardous materials in commerce, as the Secretary considers appropriate. The Secretary is authorized to apply these regulations to persons who transport hazardous materials in commerce. In addition, the law authorizes the Secretary to apply these regulations to persons who cause hazardous materials to be transported in commerce. The law also authorizes the Secretary to apply these regulations to persons who manufacture or maintain a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce. Federal hazardous material transportation law also applies to anyone who indicates by marking or other means that a hazardous material being transported in commerce is present in a package or transport conveyance when it is not, and to anyone who tampers with a package or transport conveyance used to transport hazardous materials in commerce or a required marking, label, placard, or shipping description. Regulations prescribed in accordance with Federal hazardous materials transportation law shall govern safety aspects, including security, of the transportation of hazardous materials that the Secretary considers appropriate. In 49 CFR 1.53, the Secretary delegated authority to issue regulations for the safe and secure transportation of hazardous materials in commerce to the Pipeline and Hazardous Materials Safety Administrator. The Administrator issues the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 180) under that delegated authority. This section addresses the applicability of the HMR to packagings represented as qualified for use in the transportation of hazardous materials in commerce and to pre-transportation and transportation functions.

* * * * *

(c) *Transportation functions.* Requirements in the HMR apply to transportation of a hazardous material in commerce and to each person who transports a hazardous material in commerce, including each person under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government who transports a hazardous material in commerce. Transportation of a hazardous material in commerce begins when a carrier takes physical possession of the hazardous material for the purpose of transporting it and continues until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a rail car, until the car is delivered to a private track or siding. For a private motor carrier, transportation of a hazardous material in commerce begins when a motor vehicle driver takes possession of a hazardous material for the purpose of transporting it and continues until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package. Transportation of a hazardous material in commerce includes the following:

(1) *Movement.* Movement of a hazardous material by rail car, aircraft, motor vehicle, or vessel (except as delegated by Department of Homeland Security Delegation No. 0170 at 2(103)).

(2) *Loading incidental to movement of a hazardous material.* Loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it, including blocking and bracing a hazardous materials package in a freight container or transport vehicle, and segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo, when performed by carrier personnel or in the presence of carrier personnel. For a bulk packaging, loading incidental to movement is filling the packaging with a hazardous material for the purpose of transporting it when performed by carrier personnel or in the presence of carrier personnel (except as delegated by Department of Homeland Security Delegation No. 0170 at 2(103)), including transloading.

(3) *Unloading incidental to movement of a hazardous material.* Removing a package or containerized hazardous material from a transport vehicle, aircraft, or vessel; or for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee when performed by carrier personnel or in the presence of carrier personnel or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement is completed is present during the unloading operation. (Emptying a hazardous material from a bulk packaging while the packaging is on board a vessel is subject to separate regulations as delegated by Department of Homeland Security Delegation No. 0170 at 2(103).) Unloading incidental to movement includes transloading.

(4) *Storage incidental to movement of a hazardous material.* Storage of a transport vehicle, freight container, or package containing a hazardous material by any person between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material has been delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it until the driver relinquishes possession of the package at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package.

(i) Storage incidental to movement includes—

(A) Storage at the destination shown on a shipping document, including storage at a transloading facility, provided the original shipping documentation identifies the shipment as a through-shipment and identifies the final destination or destinations of the hazardous material; and

(B) A rail car containing a hazardous material that is stored on track that does not meet the definition of ''private track or siding'' in § 171.8, even if the car has been delivered to the destination shown on the shipping document.

(ii) Storage incidental to movement does not include storage of a hazardous material at its final destination as shown on a shipping document.

* * * * *

(f) *Requirements of state and local government agencies.* (1) Under 49 U.S.C. 5125, a requirement of a state, political subdivision of a state, or an Indian tribe is preempted, unless otherwise authorized by another Federal statute or DOT issues a waiver of preemption, if—

(i) Complying with both the non-Federal requirement and Federal hazardous materials transportation law, the regulations issued under Federal hazardous material transportation law or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security is not possible;

(ii) The non-Federal requirement, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous materials transportation law, the regulations issued under Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security;

(iii) The non-Federal requirement is not substantively the same as a provision of Federal hazardous materials transportation law, the regulations issued under Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security with respect to—

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release of hazardous material; or

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

(iv) A non-Federal designation, limitation or requirement on highway routes over which hazardous material may or may not be transported does not comply with the regulations in subparts C and D of part 397 of this title; or

(v) A fee related to the transportation of a hazardous material is not fair or is used for a purpose that is not related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

(2) Subject to the limitations in paragraph (f)(1) of this section, each facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments and Indian tribes.

(3) The procedures for DOT to make administrative determinations of preemption are set forth in subpart E of part 397 of this title with respect to non-Federal requirements on highway routing (paragraph (f)(1)(iv) of this section) and in subpart C of part 107 of this chapter with respect to all other non-Federal requirements.

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or an exemption or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than $32,500 and not less than $275 for each violation. (For a violation that occurred after January 21, 1997, and before October 1, 2003, the maximum and minimum civil penalties are $27,500 and $250, respectively.) When a violation is a continuing one and involves transporting of hazardous materials or causing them to be transported or shipped, each day of the violation constitutes a separate offense. Federal hazardous material transportation law provides that each person who knowingly violates a requirement in § 171.2(l) of this subchapter or willfully violates a provision of Federal hazardous material transportation law or an order issued under Federal hazardous material transportation law shall be fined under Title 18, United States Code, or imprisoned for not more than 5 years, or both.

■ 3. Beginning on page 61940, in § 171.8, revise the definitions for ''pre-transportation function,'' ''storage incidental to movement,'' ''transloading,'' and ''unloading incidental to movement'' to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Pre-transportation function means a function specified in the HMR that is required to assure the safe transportation of a hazardous material in commerce, including—

(1) Determining the hazard class of a hazardous material.

(2) Selecting a hazardous materials packaging.

(3) Filling a hazardous materials packaging, including a bulk packaging.

(4) Securing a closure on a filled or partially filled hazardous materials package or container or on a package or container containing a residue of a hazardous material.

(5) Marking a package to indicate that it contains a hazardous material.

(6) Labeling a package to indicate that it contains a hazardous material.

(7) Preparing a shipping paper.

(8) Providing and maintaining emergency response information.

(9) Reviewing a shipping paper to verify compliance with the HMR or international equivalents.

(10) For each person importing a hazardous material into the United States, providing the shipper with timely and complete information as to the HMR requirements that will apply to the transportation of the material within the United States.

(11) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.

(12) Loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle.

(13) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.

(14) Selecting, providing, or affixing placards for a freight container or transport vehicle to indicate that it contains a hazardous material.

* * * * *

Storage incidental to movement means storage of a transport vehicle, freight container, or package containing a hazardous material by any person between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it in commerce until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it in commerce until the driver relinquishes possession of the package at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package.

(1) *Storage incidental to movement* includes—

(i) Storage at the destination shown on a shipping document, including storage at a transloading facility, provided the shipping documentation identifies the shipment as a through-shipment and identifies the final destination or destinations of the hazardous material; and

(ii) Rail cars containing hazardous materials that are stored on track that does not meet the definition of ''private track or siding'' in § 171.8, even if those cars have been delivered to the destination shown on the shipping document.

(2) Storage incidental to movement does not include storage of a hazardous material at its final destination as shown on a shipping document.

* * * * *

Transloading means the transfer of a hazardous material by any person from

one bulk packaging to another bulk packaging, from a bulk packaging to a non-bulk packaging, or from a non-bulk packaging to a bulk packaging for the purpose of continuing the movement of the hazardous material in commerce.

* * * * *

Unloading incidental to movement means removing a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel, or for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee when performed by carrier personnel or in the presence of carrier personnel or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement is completed is present during the unloading operation. (Emptying a hazardous material from a bulk packaging while the packaging is on board a vessel is subject to separate regulations as delegated by Department of Homeland Security Delegation No. 0170.1 at 2(103).) *Unloading incidental to movement* includes transloading.

* * * * *

PART 174—[CORRECTED]

■ 4. On page 61941, in the last column, revise amendatory instruction 13 to read as follows:

13. In § 174.67, paragraphs (a)(1) through (a)(3) are revised, paragraph (a)(4) is redesignated as paragraph (a)(6), new paragraphs (a)(4) and (a)(5) are added, paragraphs (i) and (j) are revised, paragraphs (k), (l), (m), and (n) are redesignated as paragraphs (l), (m), (n), and (o) respectively, and a new paragraph (k) is added, to read as follows:

■ 5. Beginning on page 61941, in the last column, in § 174.67, add introductory text, and revise paragraphs (a), (k)(1), and (k)(2) to read as follows:

§ 174.67 Tank car unloading.

For transloading operations, the following rules must be observed:

(a) *General requirements.* (1) Unloading operations must be performed by hazmat employees properly instructed in unloading hazardous materials and made responsible for compliance with this section.

(2) The unloader must apply the handbrake and block at least one wheel to prevent movement in any direction. If multiple tank cars are coupled together, sufficient hand brakes must be set and wheels blocked to prevent movement in both directions.

(3) The unloader must secure access to the track to prevent entry by other rail equipment, including motorized service vehicles. This requirement may be satisfied by lining each switch providing access to the unloading area against movement and securing each switch with an effective locking device, or by using derails, portable bumper blocks, or other equipment that provides an equivalent level of safety.

(4) The unloader must place caution signs on the track or on the tank cars to warn persons approaching the cars from the open end of the track that a tank car is connected to unloading equipment. The caution signs must be of metal or other durable material, rectangular, at least 30 cm (12 inches) high by 38 cm (15 inches) wide, and bear the word ''STOP''. The word ''STOP'' must appear in letters at least 10 cm (3.9 inches) high. The letters must be white on a blue background. Additional wording, such as ''Tank Car Connected'' or ''Crew at Work'' may also appear.

(5) The transloading facility operator must maintain written safety procedures (such as those it may already be required to maintain pursuant to the Department of Labor's Occupational Safety and Health Administration requirements in 29 CFR 1910.119 and 1910.120) in a location where they are immediately available to hazmat employees responsible for the transloading operation.

* * * * *

(k) * * *

(1) The facility operator must designate a hazmat employee responsible for on-site monitoring of the transfer facility. The designated hazmat employee must be made familiar with the nature and properties of the product contained in the tank car; procedures to be followed in the event of an emergency; and, in the event of an emergency, have the ability and authority to take responsible actions.

(2) When a signaling system is used in accordance with paragraph (i) of this section, the system must be capable of alerting the designated hazmat employee in the event of an emergency and providing immediate notification of any monitoring system malfunction. If the monitoring system does not have self-monitoring capability, the designated hazmat employee must check the monitoring system hourly for proper operation.

* * * * *

Issued in Washington, DC, on April 7, 2005, under authority delegated in 49 CFR part 1.

Stacey L. Gerard,

Acting Assistant Administrator/Chief Safety Officer.

[FR Doc. 05–7394 Filed 4–14–05; 8:45 am]

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Federal Register

Friday,
April 15, 2005

Part IV

Environmental Protection Agency

40 CFR Part 180

Lindane; Proposed Tolerance Actions; Notice of Availability; Proposed Rule and Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0246; FRL–7702–2]

Lindane; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke specific existing tolerances for the insecticide lindane because, following receipt of registrant requests, the Agency canceled their associated Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) registrations.

DATES: Comments must be received on or before June 14, 2005.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP–2004–0246, 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*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0246.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: docket ID number OPP–2004–0246.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0246. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPP–2004–0246. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line 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 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. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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

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

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

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

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

C. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information 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.

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

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

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 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.

D. What Can I do if I Wish the Agency To Maintain a Tolerance That the Agency Proposes To Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60 day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA. EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke specific existing tolerances for residues of the insecticide lindane in or on commodities listed in the regulatory text. EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of the reregistration and tolerance reassessment processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under the Food Quality Protection Act (FQPA). The safety finding determination of ''reasonable certainty of no harm'' is found in detail in each Reregistration Eligibility Decision (RED) and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs propose certain tolerance actions to be implemented to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of the REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000; internet at *http://www.ntis.gov/*. Electronic copies of REDs and TREDs are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

Additional information can be found in the Lindane RED and the Residue Chemistry Chapter document which supports the RED. A copy of the lindane Residue Chemistry Chapter is found in the Administrative Record and a hard copy is available in the public docket OPP–2002–0202, while an electronic copy is available through EPA's electronic public docket and comment system, EPA Dockets at *http://www.epa.gov/edocket/*. You may search for docket number OPP–2002–0202, then click on that docket number to view the Lindane RED support documents.

EPA is proposing to revoke certain specific existing tolerances for lindane because there are no longer any active registrations under FIFRA for uses on their associated commodities. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person, in comments submitted on the proposal, indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA published notices in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests from registrants to cancel or amend certain product registrations and delete certain lindane uses. Except for some seed treatment registrations, all other food use registrations for the insecticide lindane were canceled because EPA accepted the registrants' requests for voluntary cancellation.

In the **Federal Register** notice of September 30, 1998 (63 FR 52257) (FRL–6028–6), EPA announced the receipt of requests for amendments to delete specific uses, mushroom and nectarine, from certain lindane registrations. The Agency made the use deletions effective on March 29, 1999, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; *i.e.*, until September 29, 2000. EPA believes that end users have had sufficient time, more than four years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is proposing to revoke the associated tolerances in 40 CFR 180.133 for mushroom and nectarine to be effective on the date of publication of the final rule in the **Federal Register**.

In the **Federal Register** notice of January 27, 1999 (64 FR 4096) (FRL–6035–1), EPA announced the receipt of requests for amendments to delete specific uses, apricot, asparagus, avocado, eggplant, grape, guava, mango, pear, pecans, pepper, pineapple, quince, strawberry, and tomato, from certain lindane registrations. The Agency made the use deletions effective on July 26, 1999, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; *i.e.*, until January 26, 2001. EPA believes that end users have had sufficient time, more than four years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is proposing to revoke the associated tolerances in 40 CFR 180.133 for

apricot, asparagus, avocado, eggplant, grape, guava, mango, pear, pecans, pepper, pineapple, quince, strawberry, and tomato to be effective on the date of publication of the final rule in the **Federal Register**.

In the **Federal Register** notice of September 1, 1999 (64 FR 47786) (FRL–6098–9), EPA announced the receipt of requests to voluntarily cancel certain lindane registrations, two of which included plums among their effected commodity uses. The Agency made the registration cancellations effective on March 22, 2000, and registrant sale and distribution of existing stocks was permitted for one year after the cancellation requests were received by the Agency; *i.e.*, until June 9, 2000. EPA believes that end users have had sufficient time, more than four years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is proposing to revoke the associated tolerances in 40 CFR 180.133 for plum; and plum, prune, fresh; to be effective on the date of publication of the final rule in the **Federal Register**.

In the **Federal Register** notice of November 3, 1999 (64 FR 59763) (FRL–6383–9), EPA announced the receipt of requests to voluntarily cancel certain lindane registrations, two of which included apples, cherries, and peaches among their effected commodity uses. The Agency made the registration cancellations effective on May 9, 2000, and registrant sale and distribution of existing stocks was permitted for one year after the cancellation requests were received by the Agency; *i.e.*, until August 18, 2000. EPA believes that end users have had sufficient time, more than four years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is proposing to revoke the associated tolerances in 40 CFR 180.133 for apple, cherry, and peach to be effective on the date of publication of the final rule in the **Federal Register**.

In the **Federal Register** notice of August 28, 2002 (67 FR 55241) (FRL–7196–1), EPA announced the receipt of requests for amendments to delete specific uses, including spinach, from certain lindane registrations with an effective date of September 27, 2002. However, in a previous **Federal Register** notice of June 13, 2002 (67 FR 40730) (FRL–7178–4), EPA's receipt of requests for amendments to delete uses, including spinach, celery, collards, kale, kohlrabi, lettuce, mustard greens, and Swiss chard from a certain lindane technical registration was announced and made effective on December 10, 2002, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; *i.e.*, until June 10, 2004. Here, EPA is proposing to revoke the associated tolerances in 40 CFR 180.133 for celery, collards, kale, kohlrabi, lettuce, mustard greens, spinach, and Swiss chard with an expiration/revocation date of June 10, 2005. The Agency believes that end users will have sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade.

In the **Federal Register** notice of January 26, 2005 (70 FR 3704) (FRL–7698–2), EPA announced receipt of a request for an amendment to delete specific lindane uses from one registration, including seed treatment uses for broccoli, Brussels sprouts, cabbage, and cauliflower. The Agency made the use deletions effective on February 25, 2005. However, registrant sale and distribution of existing stocks was permitted for a period of 18 months after the October 26, 2004 approval of the revision; *i.e.*, until April 26, 2006. The Agency believes that end users will have sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade by April 26, 2007. Therefore, EPA is proposing to revoke the associated tolerances in 40 CFR 180.133 for broccoli, Brussels sprouts, cabbage, and cauliflower with an expiration/revocation date of April 26, 2007.

The **Federal Register** notice of August 15, 2002 (67 FR 53350) (FRL–7192–3) corrected the effective date found in the notice of July 17, 2002 (67 FR 46976) (FRL–7186–4), which announced EPA's receipt of requests for amendments to delete specific uses, including cucumbers, cantaloupe, watermelon, okra, onions, pumpkins, and squash, from certain lindane registrations. The Agency corrected the use deletions to be effective on August 17, 2002, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; *i.e.*, until February 17, 2004. The Agency believes that end users will have sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade also by June 10, 2005. Therefore, EPA is proposing to revoke the associated tolerances in 40 CFR 180.133 for cucumber, melon, okra, onion (dry bulb), pumpkin, squash, and squash, summer with an expiration/revocation date of June 10, 2005.

There are lindane end-use active registrations for seed treatments on cereal grains which are eligible for reregistration, provided that mitigation measures specified in the lindane RED are implemented and the Agency can establish tolerances for the seed treatment uses of lindane. The establishment of seed treatment tolerances is conditioned on EPA's ability to make a determination that establishing the new tolerances meets the safety standard in FFDCA.

Currently, it is possible that livestock feed may be derived from grain grown from lindane-treated seed and residues of lindane in livestock would be expected. Consequently, the Agency believes that the existing livestock fat tolerances for lindane per se must be maintained until and unless the grain seed treatment uses are no longer registered. If the Agency is unable to make a safety finding that would support the establishment of tolerances on wheat, barley, oats, rye, corn, and sorghum for lindane residues resulting from seed treatment only, it will take steps to cancel the grain seed treatment registrations and propose revocation of the livestock fat tolerances. The Agency intends to complete its assessment of the seed treatment uses on or prior to August 3, 2006.

Because some tolerances will remain codified in 40 CFR 180.133 with expiration/revocation dates, EPA is proposing to amend the residue definition for lindane in order to harmonize with the International Union of Pure and Applied Chemistry nomenclature. Currently the tolerances are established in 40 CFR 180.133 and expressed in terms of residues of lindane per se (gamma isomer of benzene hexachloride). EPA is proposing to amend the lindane nomenclature to gamma isomer of 1,2,3,4,5,6-hexachlorocyclohexane.

B. What Is the Agency's Authority for Taking This Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities (RACs), and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on RACs, and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. Such food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)). Food-use pesticides not registered in the United States must have tolerances in order for

commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the RED and TRED processes, and as follow-up on canceled uses of pesticides. As part of the RED and TRED processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under the FQPA. The safety finding determination is found in detail in each Post-FQPA RED and TRED for the active ingredient. REDs and TREDs propose certain tolerance actions to be implemented to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued a Post-FQPA RED for lindane. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and the Agency's decisions and conditions under which these uses and products will be eligible for reregistration. In addition, REDs and TREDs recommend the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, require assessment under the FQPA standard of ''reasonable certainty of no harm,'' and are proposed in those documents under that standard. However, tolerance revocations recommended in REDs and TREDs may be proposed in this document without such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore, no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When Do These Actions Become Effective?

With the exception of certain tolerances for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that revocation of other tolerances become effective on the date of publication of the final rule in the **Federal Register** because their associated uses have been canceled, in some cases, for several years. The Agency believes that existing stocks of pesticide products labeled for the uses associated with these other tolerances, proposed for revocation at the time of the final rule, have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Are the Proposed Actions Consistent With International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pestcide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of

international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support of June 1, 2000 (65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/.* On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''Federal Register—Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (*i.e.*, tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: April 1, 2005.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.133 in paragraph (a) is revised to read as follows:

§ 180.133 Lindane; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide lindane (gamma isomer of 1,2,3,4,5,6-hexachlorocyclohexane) in or on raw agriculture commodities as follows:

Commodity	Parts per million	Expiration/Revocation Date
Broccoli	1.0	4/26/07
Brussels sprouts	1.0	4/26/07
Cabbage	1.0	4/26/07
Cattle, fat	7.0	None
Cauliflower	1.0	4/26/07
Celery	1.0	6/10/05
Collards	1.0	6/10/05
Cucumber	3.0	6/10/05
Goat, fat	7.0	None
Hog, fat	4.0	None
Horse, fat	7.0	None
Kale	1.0	6/10/05
Kohlrabi	1.0	6/10/05
Lettuce	3.0	6/10/05
Melon	3.0	6/10/05
Mustard greens	1.0	6/10/05
Okra	1.0	6/10/05
Onion, dry bulb	1.0	6/10/05
Pumpkin	3.0	6/10/05
Sheep, fat	7.0	None
Spinach	1.0	6/10/05
Squash	3.0	6/10/05
Squash, summer	3.0	6/10/05
Swiss chard	1.0	6/10/05

* * * * *

[FR Doc. 05–7410 Filed 4–12–05; 3:38 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION

[OPP–2004–0246; FRL–7711–3]

Petition To Revoke All Tolerances for Lindane; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA requests public comment on a March 31, 2005, petition from the Pesticides Action Network North America (PANNA), Alaska Community Action on Toxics (ACAT), and Washington Toxics Coalition (WCT), available in docket number OPP–2004–0246, requesting that the Agency revoke all tolerances for the pesticide lindane. The petitioners claim that EPA must revoke existing lindane tolerances in order to implement the Agency's 2002 Reregistration Eligibility Decision (RED). The petitioners also claim that the continued existence of the lindane tolerances is contrary to a 1982 EPA policy statement that tolerances should be revoked when associated food uses have been cancelled.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0246, must be received on or before May 16, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mark T. Howard, Special Review and Reregistration Division (SRRD) (Mail Code 7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8172; fax number: (703) 308–8005; e-mail address: *howard.markt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I 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–2004–0246. 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.

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 in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number 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–2004–0246. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0246. 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–2004–0246.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0246. 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 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 your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action Is the Agency Taking?

EPA requests public comment during the next 30 days on a petition (available in docket number OPP–2004–0246) received from PANNA, ACAT, and WTC, requesting that the Agency revoke all tolerances (maximum legal residue limits) for the pesticide lindane. The petitioners claim that EPA must revoke existing lindane tolerances in order to implement the Agency's 2002 Reregistration Eligibility Decision. The petitioners also claim that the continued existence of the lindane tolerances is contrary to a 1982 EPA policy statement that tolerances should be revoked when associated food uses have been cancelled.

EPA seeks public comment and input on this petition. The petition can be found in full in EPA's electronic public docket. The internet address for EPA's electronic docket is *http://www.epa.gov/edocket*. To access the petition, select ''View EPA Headquarters Material Available for Comment'' from the menu on the left side of the screen. The docket will then display all matters currently open for comment. Scroll down to docket number OPP–2004–0246 and select it. On the following screen you have the ability to submit comments as well as view the petition. In addition, EPA's lindane RED and supporting documents are available on EPA's website at *http://www.epa.gov/pesticides/reregistration/status.htm* and in EPA's electronic docket (docket number OPP–2002–0202).

List of Subjects

Environmental protection, Lindane, Pesticides, Pests.

Dated: April 8, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division.

[FR Doc. 05–7634 Filed 4–12–05; 3:38 pm]

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Vol. 70, No. 72

Friday, April 15, 2005

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The United States Government Manual	**741–6000**
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FEDERAL REGISTER PAGES AND DATE, APRIL

16691–16920 1
16921–17196 4
17197–17300 5
17301–17582 6
17583–17886 7
17887–18262 8
18263–18960 11
18961–19252 12
19253–19678 13
19679–19876 14
19877–20044 15

CFR PARTS AFFECTED DURING APRIL

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:
7877 17197
7878 17293
7879 17295
7880 17297
7881 17301
7882 17883
7883 17885
7884 17887

Administrative Orders:
Memorandums:
Memorandums of March 31, 2005 17195

Executive Orders:
13295 (Amended by EO 13375) 17299
13375 17299

4 CFR

Ch. I 17583
21 19679

5 CFR

Proposed Rules:
337 17610

7 CFR

54 17611
62 17611
272 18263
274 18263
354 16691
624 16921
723 17150
1001 18961
1124 18963
1463 17150
1464 17150
1700 17199
1709 17199
1738 16930
1942 19253
4279 17616

Proposed Rules:
946 16759
1000 19012
1001 19012
1005 19012
1006 19012
1007 19012
1030 .....19012, 19709
1032 19012
1033 19012
1124 .....19012, 19636
1126 19012
1131 .....19012, 19636
1738 16967

8 CFR

217 17820
231 17820
251 17820

9 CFR

77 19877
93 18252
94 18252
95 18252
97 16691
98 18252

Proposed Rules:
93 17928
94 17928
98 17928

11 CFR

Proposed Rules:
100 16967
110 16967
114 16967

12 CFR

303 17550
325 17550
327 17550
347 17550
617 18965
1710 17303

13 CFR

134 17583
140 17583

14 CFR

23 .....19254, 19257
25 18271
39 .....17199, 17312, 17315, 17590, 17591, 17594, 17596, 17598, 17600, 17603, 17604, 17606, 17889, 18274, 18275, 18277, 18282, 18285, 18287, 18290, 18463, 19259, 19681, 19682, 19685
71 .....16931, 16932, 18294, 18295, 18296, 18297, 18968
95 18299
97 .....17318, 19878

Proposed Rules:
25 .....18321, 19015
39 .....16761, 16764, 16767, 16769, 16771, 16979, 16981, 16984, 16986, 17212, 17216, 17340, 17342, 17345, 17347, 17349, 17351, 17353, 17354, 17357, 17359, 17361, 17366, 17368, 17370, 17373, 17375, 17377, 17618, 17620, 17621, 18322, 18324, 18327, 18332, 19340, 19342, 19345, 19718, 19893
71 .....18335, 18337, 19027
256 16990
413 19720
415 19720

417 19720

15 CFR

742 19688
744 19688
774 19688

16 CFR

Proposed Rules:
410 17623
Ch. II 18338
1214 18339

17 CFR

211 16693
231 19672
241 19672
271 19672

18 CFR

Proposed Rules:
45 17219

19 CFR

4 17820
122 17820
178 17820

20 CFR

Proposed Rules:
404 ....19351, 19353, 19356, 19358, 19361
416 ....19351, 19353, 19356, 19358, 19361
655 16774

21 CFR

2 17168
510 17319
520 ....16933, 17319, 19261
522 16933
558 16933
1305 16902
1308 16935
1311 16902
Proposed Rules:
101 ....16995, 17008, 17010

22 CFR

10 16937

23 CFR

772 16707
Proposed Rules:
650 18342

24 CFR

200 19660
203 19666
Proposed Rules:
990 19858

26 CFR

1 ....18301, 18920
31 19694
301 ....16711, 18920, 19697
602 18920
Proposed Rules:
31 ....19028, 19721
301 19722

27 CFR

17 19880
19 19880
24 19880
25 19880
26 19880
27 19880
31 19880
45 19888
70 19880
194 19880
Proposed Rules:
1 18949
9 17940
301 18949
479 17624

28 CFR

2 19262

29 CFR

1981 17889
4022 19890
4044 19890

30 CFR

936 16941
946 19698
950 16945
Proposed Rules:
701 17626
774 17626
913 17014

31 CFR

10 ....19559, 19892
351 17288
542 17201
Proposed Rules:
29 19366

32 CFR

199 19263
527 18301
634 18969

33 CFR

110 17898
117 ....18301, 18989
165 ....17608, 18302, 18305
Proposed Rules:
100 16781
117 19029
165 ....17627, 18343

34 CFR

Proposed Rules:
Ch. I 16784

36 CFR

7 16712
1270 16717

37 CFR

258 17320
Proposed Rules:
1 17629
2 17636
3 17629
7 17636
10 17629

40 CFR

9 18074
49 18074
52 ....16717, 16955, 16958, 17321, 18308, 18991, 18993, 18995, 19000, 19702
63 ....19266, 19895
81 19844
82 19273
174 17323
180 ....17901, 17908, 19278, 19283
271 17286
Proposed Rules:
51 17018
52 ....18346, 19030, 19031, 19035, 19723, 19895
63 19369
70 19914
71 19914
81 19895
82 19371
122 18347
180 20036
300 ....18347, 19915
52 ....16784, 17027, 17028, 17029, 17640
152 16785
158 16785

42 CFR

403 16720
405 16720
410 16720
411 16720
412 16724
413 16724
414 16720
418 16720
424 16720
484 16720
486 16720

44 CFR

64 16964
65 ....16730, 16733
67 ....16736, 16738
Proposed Rules:
67 ....16786, 16789, 17037

46 CFR

Proposed Rules:
67 19376
221 19376

47 CFR

1 19293
2 17327
11 19312
15 17328
22 ....17327, 19293, 19315
24 17327
25 19316
52 19321
64 ....17330, 17334, 19330
73 ....17334, 19337
74 17327
78 17327
80 19315
87 19315
90 ....17327, 19293, 19315
101 19315
Proposed Rules:
1 19377
69 19381
73 ....17042, 17043, 17044, 17045, 17046, 17047, 17048, 17049, 17381, 17382, 17383, 17384, 19396, 19397, 19398, 19399, 19400, 19401, 19402, 19403, 19404, 19405, 19406, 19407, 19408

48 CFR

Ch. 1 ....18954, 18959
8 18954
25 18954
39 18958
52 18959
237 19003
Proposed Rules:
2 17945
7 17945
34 17945
42 17945
52 17945
204 ....19036, 19037
205 19038
211 19039
213 ....19041, 19042
223 19039
226 19038
242 19043
244 19044
252 ....19038, 19039, 19043, 19044
253 19042
538 19045
546 19051
552 ....19042, 19051

49 CFR

171 20018
174 20018
219 16966
571 18136
573 16742
585 18136
1002 17335
Proposed Rules:
172 17385

50 CFR

13 18311
17 ....17864, 17916, 18220, 19154, 19562
20 17574
21 18311
92 18244
216 19004
223 ....17211, 17386
300 ....16742, 19004
622 ....16754, 17401
648 16758
679 ....16742, 19338, 19708
Proposed Rules:
223 17223
224 17223
600 17949
648 19724
679 19409

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 APRIL 15, 2005

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Tuberculosis in cattle and bison—

State and area classifications; published 4-15-05

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—

Reserve Select, Transitional Assistance Management Program; and early eligibility for certain reserve component members; requirements and procedures; published 3-16-05

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Coke oven batteries; published 4-15-05

Air quality implementation plans; approval and promulgation; various States:

Texas; published 2-14-05

FEDERAL ELECTION COMMISSION

Bipartisan Campaign Reform Act; implementation

Non-Federal funds donations to tax-exempt and political organizations; national, State, district, and local political party committees prohibition; published 3-16-05

SECURITIES AND EXCHANGE COMMISSION

Certain broker-dealers deemed not to be investment advisors; published 4-19-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 3-11-05

BAE Systems (Operations) Ltd.; published 3-11-05

Boeing; published 3-11-05

General Electric Co.; published 3-31-05

Standard instrument approach procedures; published 4-15-05

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol, tobacco, and other excise taxes:

Tobacco products and cigarette papers and tubes; removal without tax payment for use in law enforcement activities; published 4-15-05

Alcoholic beverages:

Liquor dealers; regulation recodification and administrative changes; published 4-15-05

RULES GOING INTO EFFECT APRIL 16, 2005

FEDERAL RESERVE SYSTEM

Availability of funds and collection of checks (Regulation CC):

Next-day availability checks and local checks; routing number guide; technical amendment; published 2-23-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Agricultural Marketing Act; miscellaneous marketing practices:

USDA farmers market; operating procedures; comments due by 4-18-05; published 2-17-05 [FR 05-03072]

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]

COMMERCE DEPARTMENT

Census Bureau

Foreign trade statistics:

Automated Export System; shipper's export declaration information; mandatory filing requirement; comments due by 4-18-05; published 2-17-05 [FR 05-02926]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic bluefin tuna; comments due by 4-22-05; published 3-23-05 [FR 05-05742]

Northeastern United States fisheries—

Northeast multispecies; comments due by 4-18-05; published 3-29-05 [FR 05-06188]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

Federal and State operating permits programs; potentially inadequate monitoring requirements and methods to improve monitoring; comment request; comments due by 4-18-05; published 2-16-05 [FR 05-02995]

Air pollution; standards of performance for new stationary sources:

Stationary combustion turbines; performance standards; comments due by 4-19-05; published 2-18-05 [FR 05-03000]

Air programs; State authority delegations:

Arizona; comments due by 4-20-05; published 3-21-05 [FR 05-05517]

Texas; comments due by 4-18-05; published 3-18-05 [FR 05-05411]

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 4-18-05; published 3-18-05 [FR 05-05407]

Ohio; comments due by 4-18-05; published 3-18-05 [FR 05-05408]

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:

North Carolina; comments due by 4-22-05; published 3-23-05 [FR 05-05721]

Texas; comments due by 4-18-05; published 3-18-05 [FR 05-05410]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Acibenzolar-S-methyl; comments due by 4-18-05; published 2-16-05 [FR 05-02897]

Avermectin B1 and its delta-8,9-isomer; comments due by 4-18-05; published 2-16-05 [FR 05-02985]

Clothianidin; comments due by 4-18-05; published 2-16-05 [FR 05-02984]

Glyphosate; comments due by 4-18-05; published 2-16-05 [FR 05-02983]
Lignosulfonates; comments due by 4-18-05; published 2-16-05 [FR 05-02986]
Octanamide, etc.; comments due by 4-18-05; published 2-16-05 [FR 05-02975]
Quizalofop-ethyl; comments due by 4-18-05; published 2-16-05 [FR 05-02982]
Syrups, hydrolyzed starch, hydrogenated; comments due by 4-18-05; published 2-16-05 [FR 05-02981]
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

Committees; establishment, renewal, termination, etc.:
Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]
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]
Radio services, special:
Private land mobile services—
800 MHz band; public safety interference proceeding; comments due by 4-21-05; published 4-6-05 [FR 05-06806]
900 MHz band; Business and Industrial Land Transportation Pools channels; flexible use; comments due by 4-18-05; published 3-18-05 [FR 05-05406]
Television broadcasting:
Digital television—
Television receiver tuner requirements; comments due by 4-18-05; published 3-18-05 [FR 05-05402]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

GRAS or prior-sanctioned ingredients:
Menhaden oil; comments due by 4-22-05; published 3-23-05 [FR 05-05641]
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:
North American right whale vessel strikes reduction; port access routes study of potential vessel routing measures; comments due by 4-19-05; published 2-18-05 [FR 05-03117]
Regattas and marine parades:
Maritime Week Tugboat Races; comments due by 4-19-05; published 3-29-05 [FR 05-06145]

HOMELAND SECURITY DEPARTMENT

Privacy Act; implementation; comments due by 4-21-05; published 3-22-05 [FR 05-05584]

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]

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]

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

Economic regulations:
Aviation traffic data; collection, processing, and reporting requirements; comments due by 4-18-05; published 2-17-05 [FR 05-02861]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:
Charlotte, NC; proposed area navigation instrument flight Rules Terminal Transition Routes; comments due by 4-18-05; published 3-3-05 [FR 05-04138]
Aircraft:
New aircraft; standard airworthiness certification; comments due by 4-18-05; published 2-15-05 [FR 05-02799]
Airworthiness directives:
Air Tractor, Inc.; comments due by 4-21-05; published 2-22-05 [FR 05-03271]
Airbus; comments due by 4-22-05; published 3-23-05 [FR 05-05699]
Bell Helicopter Textron Canada; comments due by 4-18-05; published 2-17-05 [FR 05-03049]
Boeing; comments due by 4-18-05; published 3-3-05 [FR 05-04073]
Bombardier; comments due by 4-18-05; published 2-17-05 [FR 05-02964]
Burkhardt Grob Luft-Und Raumfahrt GmbH & Co. KG; comments due by 4-20-05; published 3-23-05 [FR 05-05693]
Gulfstream; comments due by 4-18-05; published 2-16-05 [FR 05-02761]
Pilatus Aircraft Ltd.; comments due by 4-19-05; published 3-1-05 [FR 05-03634]
Rolls-Royce plc; comments due by 4-19-05; published 2-18-05 [FR 05-03191]
Airworthiness standards:
Special conditions—
Bombardier Aerospace Models BD-700-1A10 and BD-700-1A11 Global Express airplanes; comments due by 4-19-05; published 3-30-05 [FR 05-06310]
Class E airspace; comments due by 4-18-05; published 3-10-05 [FR 05-04658]

VETERANS AFFAIRS DEPARTMENT

Loan guaranty:
Housing loans in default; servicing, liquidating, and claims procedures; comments due by 4-19-05; published 2-18-05 [FR 05-03084]

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*.

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available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1270/P.L. 109–6

To amend the Internal Revenue Code of 1986 to extend the Leaking Underground Storage Tank Trust Fund financing rate. (Mar. 31, 2005; 119 Stat. 20)

Last List April 1, 2005

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