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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150-AH12

Public Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect changes regarding officials who initially deny access to records or deny access to records whose initial denial has been appealed, and to reflect a change of an appellate official due to a reorganization. This amendment authorizes the Executive Assistant to the Secretary of the Commission, rather than the Assistant Secretary, to make the initial determination to deny NRC records, in whole or in part, under the NRC's regulations. An appeal of a denial of request for waiver or reduction of fees, or denial of a request for expedited processing is made to the Executive Director for Operations, rather than the Secretary of the Commission. The final rule establishes NRC procedures to give predisclosure notification to submitters of confidential business or commercial information, and makes a number of additional clarifying and conforming amendments.

EFFECTIVE DATE: July 14, 2005.

ADDRESSES: Carol Ann Reed, Freedom of Information Act and Privacy Act Officer, Information and Records Services Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; Telephone: (301) 415-7169; Internet: FOIA@nrc.gov.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (FOIA) grants individuals the right to seek

access to agency records and the right to appeal an initial agency denial of access to the requested records. The Privacy Act (PA) allows an individual to request records filed under his or her name, or personal identifier, and to appeal a denial of access to the records.

On April 27, 2004 (69 FR 22737), a notice of proposed rulemaking to amend 10 CFR part 9, subpart A, Freedom of Information Act Regulations, and subpart B, Privacy Act Regulations was published with a request for public comment by July 12, 2004.

The final rule amends several provisions. In January 2001, the Commission announced a reorganization that directed the Chief Information Officer (CIO) to report to the Executive Director for Operations (EDO). To conform with this reporting relationship, the appellate authority, previously delegated to the Secretary of the Commission to serve as the appellate official for denials of requests for FOIA fee waivers and requests for expedited processing of FOIA requests, has been reassigned to the EDO or a Deputy EDO. Also, the Executive Assistant to the Secretary of the Commission has been designated the initial denying official for records located in the Office of the Commissioners, Office of the Secretary, and with Advisory Committees because the Assistant Secretary position was abolished.

This final rule establishes agency procedures for predisclosure notification to submitters of confidential financial and commercial information.

The final rule also updates provisions relating to the location of publicly available NRC records, deletes the reference to the Chief Information Officer designating the FOIA/PA Officer, and makes several clarifications: where to send requests and appeals; how to establish an account with the PDR reproduction contractor; how to obtain access to copyrighted information; applicability of the independent determination made by the FOIA/PA Officer; and that failure of a requester to pay FOIA fees billed by another Federal agency may be a basis for not processing a request. The final rule makes several changes in the PA regulations. Reference to a specific Executive Order number that establishes criteria for classifying information has been deleted. A uniform approach for

referral of PA records under the control of another Federal agency has been established. The final rule also removes the PA fee waiver provision because it is not needed. Readers are referred to the NRC Web site to find the particular exemptions applicable to a specific PA System of Records.

Comments on the Proposed Rule

The NRC received comments from one individual and three organizations. The individual's comment related to nuclear weapons and was not within the scope of this rule. The other comments relate to § 9.28, a new provision that implements Executive Order 12600, issued June 23, 1987, and requires agencies to implement, by regulation, procedures for predisclosure notification to submitters of confidential business and financial information.

One commenter suggested that the notice of opportunity to object to NRC's initial disclosure determination provided in § 9.28(a) should specify the grounds on which the agency based its determination. Often, NRC's initial determination does provide the basis for its determination. However, in some cases, the reason NRC gives initial notice is that the agency does not have an adequate record to make a determination. In many of these cases documents marked or believed to contain trade secrets or confidential commercial or financial information have been in NRC files for many years, thus the basis for continued withholding from public disclosure may no longer be applicable. In these cases, NRC's initial notice often seeks additional information on which to base a determination. Language has been added to § 9.28(a) to clarify that some initial notices are for the purpose of obtaining information to support an agency determination.

Several commenters raised concerns regarding the time allowed for submitters to respond to NRC notices. Several requested that extensions be allowed. In response to these comments, § 9.28(b) has been changed to allow 30 calendar days to respond to the NRC notice, rather than the 15 days allowed in the proposed rule. Also, § 9.28(c)(3) has been changed to state that, should NRC deny the submitter's request for nondisclosure and decide to disclose the information, the disclosure date set by NRC would be 30 calendar days from

the NRC's notice to the submitter, subject to a determination by the Commission that a shorter period of time to respond is necessary in a particular instance. The proposed rule stated it would be a "reasonable period of time."

Several commenters raised issues relating to withdrawal of information when NRC disagreed with a submitter's claim that the information was a trade secret or confidential commercial or financial information or was voluntarily submitted, and to eliminate the balancing provision in 10 CFR 2.390. These suggestions have not been adopted. These same comments were received by the Commission in response to a proposed rule amending the predecessor to 10 CFR 2.390, 10 CFR 2.790 issued November 23, 1992 (57 FR 61013). The agency thoroughly discussed its reasons for rejecting these suggestions in its response to comments to a revised proposed rule (66 FR 52721; October 17, 2001) and its publication of the final rule (68 FR 18836; April 17, 2003).

A commenter suggested that § 9.28(b) be changed to ensure that the NRC considers information furnished after the NRC-imposed deadline, but before NRC makes a final determination, if practicable. The agency does not believe this change is necessary. Section 9.28(b), the provision that allows the NRC FOIA/PA Officer to grant extensions, gives an adequate opportunity for the submitter to submit information after the initial response date and have it considered by the NRC.

Another commenter suggested that the agency provide an appeal provision if the agency decides to release information a submitter claims to be trade secrets or confidential commercial or financial information. The NRC does not believe that an appeal provision is necessary because § 9.28(c)(3) states that, should NRC deny the submitter's request for nondisclosure and decide to disclose the information, the disclosure date set by NRC would be 30 calendar days from the NRC's notice to the submitter, unless the Commission determines that a shorter period of time to respond is necessary. However, the Commission would give the submitter sufficient time to seek judicial review if the submitter objected to the NRC's final decision.

Finally, a commenter suggested establishing a standard for determining when voluntarily submitted information is proprietary. This suggestion was not adopted because § 9.28 deals only with procedural provisions by which submitters of trade secrets or confidential commercial or financial

information are given notice of agency determinations regarding this information once it has become subject to a FOIA request, and the submitters' rights with respect to agency determinations.

Discussion of Amendments

Section 9.8 includes a new § 9.28 in the list of sections that contain an information collection requirement that appears in paragraph (b).

Section 9.13 deletes the reference to the Chief Information Officer designating the FOIA/PA Officer.

Section 9.21(c)(5) reflects that an index to records made public in response to a FOIA request that are likely to become the subject of subsequent FOIA requests is publicly available at the NRC Web site. Section 552(a)(2)(E) of the FOIA requires that NRC make public an index to records made public in response to FOIA requests that are likely to become the subject of subsequent FOIA requests for substantially the same records.

Section 9.21(c)(6) addresses the requirement that the agency publish a statement in the **Federal Register** determining that publication of an index quarterly or more frequently is unnecessary. This section states that it is unnecessary to continue publishing the monthly index because members of the public may create their own indexes to records, including those in the categories required to be made public by 5 U.S.C. 552(a)(2), by using the search features in ADAMS. Section 5 U.S.C. 552(a)(2)(E) requires that the agency maintain and make available for public inspection and copying current indexes for records that 5 U.S.C. 552(a)(2) (A), (B), (C), and (D) require be made public and publish that index quarterly or more frequently, unless determined by order published in the **Federal Register**, that the publication would be unnecessary or impracticable. To meet this requirement, before making ADAMS publicly accessible, the NRC published "Documents Made Publicly Available" (NUREG-0540) on a monthly basis. With the public's ability to create their own indexes using ADAMS, the NRC determined that publication of the monthly index was no longer necessary.

Section 9.23 clarifies how a person may open an account with the NRC PDR reproduction contractor and states that payment is made directly to the PDR reproduction contractor. Also, § 9.23 clarifies that a request is not considered received under the FOIA until the date it is actually received by the Freedom of Information Act and Privacy Act Officer (FOIA/PA Officer).

Section 9.25(g) is renumbered and reorganized so that the responsibility of each denying official is described in separate paragraphs. Section 9.25(g)(2) reflects that the Executive Assistant to the Secretary of the Commission makes the initial determination to deny agency records in whole or in part under § 9.17(a) instead of the Assistant Secretary of the Commission. In addition, the Executive Assistant to the Secretary of the Commission is designated as the denying official for records for which an Advisory Committee has responsibility. Section 9.25(h) clarifies that the independent determination by the FOIA/PA Officer applies to records other than those records for which the initial disclosure determination is made by the Executive Assistant to the Secretary of the Commission, the General Counsel, or the Assistant Inspector General for Investigations.

Section 9.27(a) indicates that non-sensitive records disclosed in response to FOIA requests are made publicly available through the ADAMS.

Section 9.28 is added to establish procedures for predisclosure notification to submitters of confidential business and financial information. This implements the requirement of Executive Order 12600, that directs agencies to establish these procedures by regulation.

Section 9.29 is renumbered and reorganized so that each type of appeal or appellate official's responsibility is described in separate paragraphs. As a result of a reorganization, § 9.29(c) reflects that an appeal of a denial of a request for a waiver or reduction of fees, or denial of a request for expedited processing, is appealed to the EDO rather than to the Secretary of the Commission. Section 9.29(c) also reflects that the Executive Assistant to the Secretary of the Commission makes the initial determination to deny agency records in whole or in part under § 9.17(a) instead of the Assistant Secretary of the Commission. Also, an appeal continues to be directed to the appropriate appellate official, but is sent to the FOIA/PA Officer rather than to the appellate official to ensure that appeals directed to the EDO, Secretary of the Commission, and Inspector General are uniformly tracked.

Section 9.35(d) states that if a copyrighted publication is responsive to a FOIA request, the requester will be informed of the citation to the copyrighted publication and advised to contact the NRC's PDR to arrange to view the publication. This emphasizes the responsibility of the requester to

make arrangements with the PDR staff to view a copyrighted publication.

Section 9.40(f) states that failure to pay applicable fees billed by another agency for a previous FOIA request is a basis for not processing a new request received from the same requester. This conforms NRC regulations to past NRC and government-wide practice.

As a result of a reorganization, § 9.43(d) reflects that an appeal of a denial of a request for a waiver or reduction of fees, or denial of a request for expedited processing, is appealed to the EDO rather than to the Secretary of the Commission.

Section 9.53(b) clarifies that a request is not considered received under the PA until the date it is actually received by the FOIA/PA Officer.

In § 9.54(a)(1) the term "photocopy" was changed to "copy" to ensure that copies made by any type of technology will be acceptable documentation.

Section 9.61(c)(1) eliminates the reference to a specific Executive Order number and states that the exempted information is information classified under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy. This is consistent with the statutory language that does not refer to a specific Executive Order number.

Also, the reference to § 9.95 was deleted because changes to that section would delete references to specific exemptions.

Section 9.62 establishes a uniform approach for dealing with requests for PA records under control of another Government agency by indicating that the requester will be provided the name of the controlling agency, if known.

Sections 9.65 and 9.67 clarify that appeals of denials of access and Statements of Disagreement under the PA will continue to be directed to the appropriate appellate official, but are sent to the FOIA/PA Officer rather than to the appellate official to ensure that appeals directed to the EDO and to the Inspector General are uniformly tracked. Also §§ 9.65, 9.66, and 9.67 state that a PA appeal is not deemed received until it is actually received by the FOIA/PA Officer. Sections 9.65, 9.66, and 9.67 state that calendar days are used to calculate the time within which an appeal of denial of access to a record in a PA System of Records must be made and within which a Statement of Disagreement must be submitted.

Section 9.85 removes the PA fee waiver provision because it is not needed. The agency's practice is to provide a free copy of the information to the requester. It also notes that fees may be charged where the information is disclosed from PA Systems of Records

under the FOIA. This normally occurs because an entire system of records containing criminal law enforcement records is exempt from being accessed under the PA exemption (j)(2). Thus, a request for records from such a system is processed under the FOIA, and the FOIA fee standards apply.

Section 9.95 indicates that specific exemptions applicable to each PA System of Record is found in the PA notice published biannually in the **Federal Register** and a current version is available at the NRC Web site, <http://www.nrc.gov>. This avoids the need to revise NRC regulations each time a change is made to an exemption section of a PA notice for a PA System of Record, and ensures that those who need this information will be able to obtain the most current information, with greater ease, from the NRC Web site.

National Technology Transfer and Advancement Act

The National Technology and Transfer Act of 1995 (Act), Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with the applicable law or otherwise impractical. This rule reflects changes in officials who initially deny access to records or deny access to records whose initial denial has been appealed, and makes a change in an appellate official due to a reorganization. The rule establishes NRC procedures to give predisclosure notification to submitters of confidential business or commercial information, and makes a number of additional clarifying and conforming amendments. For these reasons, the Commission concludes that the Act does not apply to this rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150-0043.

The burden to the public for these information collections is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFOCOLLECTS@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0043), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this rule because this rule is administrative in that it amends the regulations to reflect the current NRC organization and current responsibilities of NRC officials for denying access to requests for information and other requests made under the FOIA or PA. These amendments are considered minor, non-substantive amendments and will not have an economic impact on NRC licensees or the public.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect those who make requests for access to information under the provisions of the FOIA and PA. These are considered minor, non-substantive amendments and will not have an economic impact on NRC licensees or the public.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 5 U.S.C. 553; the Freedom of Information Act as amended; the Privacy Act as amended, the NRC is adopting the following amendments to 10 CFR part 9.

PART 9—PUBLIC RECORDS

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

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704; 112 stat. 2750 (44 U.S.C. 3504 note).

Subpart A is also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570. Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

■ 2. In § 9.8, paragraph (b) is revised to read as follows:

§ 9.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 9.23, 9.25, 9.28, 9.29, 9.40, 9.41, 9.53, 9.54, 9.55, 9.65, 9.66, and 9.67.

■ 3. In § 9.13, the definition of the *Freedom of Information Act and Privacy Act Officer* is revised to read as follows:

§ 9.13 Definitions.

* * * * *

Freedom of Information Act and Privacy Act Officer means the NRC official designated to fulfill the responsibilities for implementing and administering the Freedom of Information Act and the Privacy Act as specifically designated under the regulations in this part.

* * * * *

■ 4. In § 9.21, paragraphs (c)(5) and (6) are revised to read as follows:

§ 9.21 Publicly available records.

* * * * *

(c) * * *

(5) Copies of records that have been released to a person under the FOIA that, because of the nature of their subject matter, the NRC determines have become or are likely to become the subject of subsequent requests for substantially the same records and a general index to those records; and

(6) Individual indexes to publicly available records, including those records specified in paragraph (c) of this section, may be created by using the search features of the Agencywide Documents Access and Management System (ADAMS), located at the NRC Web site, <http://www.nrc.gov>. This capability made it unnecessary for the NRC to continue publishing its monthly publication, *Documents Made Publicly Available* (NUREG–0540) after March 1999.

* * * * *

■ 5. In § 9.23, paragraph (a)(1)(ii) and the introductory text of paragraph (b) are revised to read as follows:

§ 9.23 Requests for records.

(a) * * *

(1) * * *

(ii) To obtain copies of records expeditiously, a person may open an account with the NRC Public Document Room reproduction contractor. Payment for reproduction services will be made directly to the contractor.

* * * * *

(b) A person may request agency records by submitting a request authorized by 5 U.S.C. 552(a)(3) to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6 of this chapter. The request must be in writing and clearly state on the envelope and in the letter that it is a “Freedom of Information Act request.” The NRC does not consider a request as received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer.

* * * * *

■ 6. In § 9.25, paragraphs (g) and (h) are revised to read as follows:

§ 9.25 Initial disclosure determination.

* * * * *

(g)(1) *Initial disclosure determination on requests for records originated by, or located in the files of the Office of the Inspector General.* If, as a result of the review specified in paragraph (f) of this section, the Assistant Inspector General for Investigations finds that agency records that are originated by or located in the Office of the Inspector General are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to

the public interest and will adversely affect the rights of any person, the Assistant Inspector General for Investigations will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in § 9.27.

(2) *Initial disclosure determinations on requests for records originated by or transmitted to the Commission, or a Commissioner, or records originated by, or for which the Office of the Secretary or an Advisory Committee has primary responsibility.* If, as a result of the review specified in paragraph (f) of this section, the Executive Assistant to the Secretary of the Commission finds that agency records originated by or transmitted to the Commission or a Commissioner, or records originated by, or for which the Office of the Secretary or an Advisory Committee has primary responsibility, are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Executive Assistant to the Secretary of the Commission will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in § 9.27.

(3) *Initial disclosure determination for records originated by, or for which the Office of the General Counsel has principal responsibility.* If, as a result of the review specified in paragraph (f) of this section, the General Counsel finds that agency records that are originated by, or for which the Office of the General Counsel has primary responsibility, are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the General Counsel will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in § 9.27.

(h) *Initial disclosure determinations on requests for records other than those for which the initial disclosure determination is made by the Assistant Inspector General for Investigations, the Executive Assistant to the Secretary of the Commission, or the General Counsel.* If, as a result of the review specified in paragraph (f) of this section, the head of the responsible office finds that agency records other than those described in paragraph (g) of this section, that are originated by, or for which the office has primary

responsibility, should be denied in whole or in part, the head of the office will submit that finding to the Freedom of Information Act and Privacy Act Officer, who will, in consultation with the Office of the General Counsel, make an independent determination whether the agency records should be denied in whole or in part. If the Freedom of Information Act and Privacy Act Officer determines that the agency records sought are exempt from disclosure and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Freedom of Information Act and Privacy Act Officer will notify the requester of the determination in the manner provided in § 9.27.

* * * * *

■ 7. In § 9.27, paragraph (a) is revised to read as follows:

§ 9.27 Form and content of responses.

(a) When the NRC has located a requested agency record and has determined to disclose the agency record, the Freedom of Information Act and Privacy Act Officer will promptly furnish the agency record or notify the requester where and when the agency record will be available for inspection and copying. The NRC will also advise the requester of any applicable fees under §§ 9.35 and 9.37. The NRC will routinely make copies of non-sensitive records disclosed in response to Freedom of Information Act requests publicly available through the Agencywide Document Access and Management System (ADAMS) located in the NRC's Electronic Reading Room that can be accessed via the NRC Web site at <http://www.nrc.gov/NRC/reading-room/adams.html>. Records that contain information personal to the requester, involve matters that are not likely to be of public interest to anyone other than the requester or contain privileged or confidential information that should only be disclosed to the requester will not be made publicly available on the NRC Web site.

* * * * *

■ 8. A new § 9.28 is added to read as follows:

§ 9.28 Predisclosure notification procedures for information containing trade secrets or confidential commercial or financial information.

(a) *Notice of opportunity to object to NRC's initial disclosure determination.* Whenever NRC makes an initial determination that information should be disclosed in response to a Freedom of Information Act request or a Freedom of Information Act appeal which has been designated by the submitter as

trade secrets or confidential commercial or financial information, or the NRC believes the information contains such trade secrets or confidential commercial or financial information, the NRC will give the submitter of the information written notice of NRC's initial determination, or NRC's need for information on which to base a determination, and an opportunity to object. The notice must describe the business information requested or include copies of the requested records or record portions containing the information.

(b) *Submitter objection to disclosure.* The submitter will be allowed 30 calendar days from date of the notice described in paragraph (a) of this section to object to disclosure, unless the Commission determines that a shorter period of time to respond is necessary in a particular instance. If a submitter has any objection to disclosure, the submitter must provide a detailed written statement. The statement must specify all grounds that support why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received until after the date specified for response will not be considered unless that date is extended by the Freedom of Information Act and Privacy Act Officer upon request by the submitter.

(c) *Notice of final decision to disclose.* The NRC shall consider a submitter's written statement and specific grounds for nondisclosure. If the NRC agrees to withhold the information from public disclosure, the NRC will inform the requester in the manner described in § 9.27 of the agency decision to deny access to the requested information. Whenever the NRC denies the submitter's request for nondisclosure and decides to disclose the information, the NRC shall give the submitter written notice, which must include:

- (1) A statement of the reason(s) for the determination;
- (2) A description of the business information to be disclosed; and
- (3) A specified disclosure date, which will be 30 calendar days subsequent to the date of the notice, or less, as provided under paragraph (b) of this section, after which the information will be made available to the public.

(d) *Corresponding notice to requesters.* When the NRC provides a submitter with notice and opportunity

to object to disclosure under paragraph (b) of this section, the NRC shall also notify the requester(s). Whenever the NRC notifies a submitter of its final decision to disclose the requested information under paragraph (c) of this section, the NRC shall also notify the requester(s). When a submitter files a lawsuit seeking to prevent the disclosure of trade secrets or confidential commercial or financial information, the NRC shall notify the requester(s).

(e) *Notice to submitter of Freedom of Information Act lawsuit.* Whenever a requester files a lawsuit seeking to compel disclosure of trade secrets or confidential commercial or financial information, the NRC shall promptly notify the submitter.

■ 9. Section 9.29 is revised to read as follows:

§ 9.29 Appeal from initial determination.

(a) A requester may appeal a notice of denial of a Freedom of Information Act request for access to agency records, denial of a request for waiver or reduction of fees, or denial of a request for expedited processing under this subpart within 30 calendar days of the date of the NRC's denial.

(b) For agency records to which access is denied by the Assistant Inspector General for Investigations, the appeal must be in writing directed to the Inspector General and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial Freedom of Information Act Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The Inspector General will make the NRC determination on the appeal within 20 working days after the receipt of the appeal. If the Inspector General denies an appeal of access to records, in whole or in part, the Inspector General will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(c) For agency records to which access is denied by the Executive Assistant to the Secretary of the Commission, the General Counsel, or an office director

reporting to the Commission, the appeal must be in writing directed to the Secretary of the Commission and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial Freedom of Information Act Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The Secretary of the Commission will make the NRC determination on the appeal within 20 working days after the receipt of the appeal. If the Secretary of the Commission denies an appeal of access to records, in whole or in part, the Secretary of the Commission will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(d) For agency records to which access is denied by agency officials other than the Assistant Inspector General for Investigations, the Executive Assistant to the Secretary of the Commission, the General Counsel, or other office director reporting to the Commission, the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The Executive Director for Operations or a Deputy Executive Director will make the NRC determination on the appeal within 20 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal of access to records, in whole or in part, the Executive Director for Operations or a Deputy Executive Director, will notify the requester of the denial, explaining the exemptions relied upon and how the exemptions apply to the agency records withheld. The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United

States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(e) For the denial of a request for expedited processing the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The NRC will make a determination on the appeal within 10 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal for expedited processing, the Executive Director for Operations or a Deputy Executive Director, will notify the person making the request of the decision to sustain the denial, including a statement explaining why the request does not meet the requirements of § 9.25(e)(1) and (2). The notice will inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(f) For denial of a waiver or reduction of fees for locating and reproducing agency records, the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer. The NRC will make a determination on the appeal within 20 working days after the receipt of the appeal. If the Executive Director for Operations or a Deputy Executive Director denies an appeal of a waiver or reduction of fees for locating and reproducing agency records, the Executive Director for Operations or a Deputy Executive Director, will notify the person making the request of the decision to sustain the denial, including a statement explaining why the request does not meet the requirements of § 9.41. The notice will inform the requester that the denial is a final agency action and that judicial

review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(g) The Executive Director for Operations, a Deputy Executive Director, the Secretary of the Commission, or the Inspector General will furnish copies of all appeals and written determinations on appeals to the Freedom of Information Act and Privacy Act Officer.

■ 10. In § 9.35, paragraph (d) is revised to read as follows:

§ 9.35 Duplication fees.

* * * * *

(d) Copyrighted material may not be reproduced in violation of the copyright laws. Requesters will be given the citation to any copyrighted publication and advised to contact the NRC Public Document Room to arrange to view the publication.

■ 11. In § 9.40, paragraph (f) is revised to read as follows:

§ 9.40 Assessment of fees.

* * * * *

(f) If the NRC receives a new request and determines that the requester has previously failed to pay a properly charged fee under the Freedom of Information Act to the NRC or other Federal agency within 30 calendar days of receipt of the bill on a previous request, the NRC may refuse to accept the new request for processing until payment is made of the full amount owed on the prior request, plus any applicable interest assessed as provided in § 9.34.

* * * * *

■ 12. In § 9.43, paragraph (d) is revised to read as follows:

§ 9.43 Processing requests for a waiver or reduction of fees.

* * * * *

(d) As provided in § 9.29, a requester may appeal a denial of a request to waive or reduce fees to the Executive Director for Operations. The appeal must be submitted within 30 calendar days from the date of the notice.

■ 13. In § 9.53, paragraph (b) is revised to read as follows:

§ 9.53 Requests; how and where presented.

* * * * *

(b) All written requests must be made to the Freedom of Information Act and Privacy Act Officer, U.S. Nuclear Regulatory Commission, and sent by an appropriate method listed in § 9.6, and should clearly state on the envelope and

in the letter, as appropriate: "Privacy Act Request," "Privacy Act Disclosure Accounting Request," "Privacy Act Correction Request." The NRC does not consider a request received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer.

* * * * *

■ 14. In § 9.54 paragraph (a)(1) is revised as follows:

§ 9.54 Verification of identity of individuals making requests.

(a)* * *

(1) *Written requests.* An individual making a written request respecting a record about himself may establish his identity by a signature, address, date of birth, employee identification number, if any, and one other item of identification such as a copy of a driver's license or other document.

* * * * *

■ 15. In § 9.61 the introductory text of paragraph (c), the introductory text of paragraph (c)(1), and paragraph (c)(1)(i) are revised to read as follows:

§ 9.61 Procedures for processing requests for records exempt in whole or in part.

* * * * *

(c) *Specific exemptions under 5 U.S.C. 552a(k).* Individual requests for access to records which have been exempted from access under the provisions of 5 U.S.C. 552a(k) shall be processed as follows:

(1) *Information classified under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and exempted under 5 U.S.C. 552a(k)(1).* (i) Requested information classified by NRC will be reviewed by the responsible official of the NRC to determine whether it continues to warrant classification under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy.

* * * * *

■ 16. Section 9.62 is revised to read as follows:

§ 9.62 Records under control of another Government agency.

Requests received by NRC pertaining to records under the control of another Government agency will be returned to the requester with the name of the controlling Government agency, if known, within ten working days after receipt by the NRC.

■ 17. In § 9.65, paragraph (b) is revised to read as follows:

§ 9.65 Access determinations; appeals.

* * * * *

(b) *Appeals from denials of access.* If an individual has been denied access to a record the individual may request a final review and determination of that individual's request by the Inspector General or the Executive Director for Operations, as appropriate. A request for final review of an initial determination must be filed within 60 calendar days of the receipt of the initial determination.

For agency records denied by the Assistant Inspector General for Investigations, the appeal must be in writing directed to the Inspector General and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. For agency records denied by the Freedom of Information Act and Privacy Act Officer, the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter "Privacy Act Appeal-Denial of Access." The NRC does not consider an appeal received until the date it is actually received by the Freedom of Information Act and Privacy Act Officer.

* * * * *

■ 18. In § 9.66, paragraph (b) is revised to read as follows:

§ 9.66 Determinations authorizing or denying correction of records; appeals.

* * * * *

(b) *Appeals from initial adverse determinations.* If an individual's request to amend or correct a record has been denied, in whole or in part, the individual may appeal that action and request a final review and determination of that individual's request by the Inspector General or the Executive Director for Operations, as appropriate. An appeal of an initial determination must be filed within 60 calendar days of the receipt of the initial determination. For agency records denied by the Assistant Inspector General for Investigations, the appeal must be in writing directed to the Inspector General and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. For agency records denied by the Freedom of Information Act and Privacy Act Officer the appeal must be in writing directed to the Executive Director for Operations and sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6. The appeal should clearly state on the envelope and in the letter "Privacy Act Correction Appeal." The NRC does not consider an appeal received until the

date it is actually received by the Freedom of Information Act and Privacy Act Officer. Requests for final review must set forth the specific item of information sought to be corrected or amended and should include, where appropriate, records supporting the correction or amendment.

* * * * *

■ 19. In § 9.67, paragraph (a) is revised to read as follows:

§ 9.67 Statements of disagreement.

(a) *Written "Statements of Disagreement"* may be furnished by the individual within 30 calendar days of the date of receipt of the final adverse determination of the Inspector General or the Executive Director for Operations. "Statements of Disagreement" directed to the Executive Director for Operations must be sent to the Freedom of Information Act and Privacy Act Officer by an appropriate method listed in § 9.6, and should be clearly marked on the statement and on the envelope, "Privacy Act Statement of Disagreement." "Statements of Disagreement" directed to the Inspector General must be sent to the Freedom of Information Act and Privacy Officer by an appropriate method listed in § 9.6, and should be clearly marked on the statement and on the envelope "Privacy Act Statement of Disagreement".

* * * * *

■ 20. Section 9.85 is revised to read as follows:

§ 9.85 Fees.

Fees shall not be charged for search or review of records requested under this subpart or for making copies or extracts of records to make them available for review, although fees may be charged for additional copies. Fees established under 31 U.S.C. 483c and 5 U.S.C. 552a(f)(5) shall be charged according to the schedule contained in § 9.35 for actual copies of records disclosed under the Freedom of Information Act from Privacy Act Systems of Records.

■ 21. Section 9.95 is revised to read as follows:

§ 9.95 Specific exemptions.

Exemptions applicable to Privacy Act Systems of Records are stated in each Privacy Act System of Records Notice which is published in the **Federal Register** and is available at the NRC Web site, <http://www.nrc.gov>.

Dated at Rockville, Maryland, this 7th day of June, 2005.

For the Nuclear Regulatory Commission.
Annette L. Vietti-Cook,
Secretary of the Commission.
[FR Doc. 05-11714 Filed 6-13-05; 8:45 am]
BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE226, Special Condition 23-166-SC]

Special Conditions; Tiger Aircraft, EFIS on the AG-5B; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Tiger Aircraft, 266 Pilot Way, Martinsburg, WV, 25401, for a change to the Type Design of the Tiger AG-5B. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic flight instrument system (EFIS) in the form of a Garmin G1000 integrated avionics system. The current applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of the systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is June 3, 2005. Comments must be received on or before July 14, 2005.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE226, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE226. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification

Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE226." The postcard will be date stamped and returned to the commenter.

Background

Tiger Aircraft made application to the FAA for a change to the Type Design for the Tiger AG-5B. The AG-5B is currently approved under TC No. A16EA. It is a single engine airplane originally added to TC No. A16EA on September 21, 1990. The proposed modification to the AG-5B incorporates a novel or unusual design feature, or the Garmin G1000 EFIS display system that may be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Tiger Aircraft must show that the Tiger AG-5B aircraft meets the original certification basis for the

airplane, as listed on Type Data Sheet A16EA, the additional certification requirements added for the Garmin 1000, exemptions, if any; and the special conditions adopted by this rulemaking action. The regulations that were applied at a later amendment than the original certification basis for the AG-5B to accommodate the Garmin G1000 EFIS include 23.1301 at amendment 20, 23.1309 at amendment 49, 23.1311 at amendment 49, 23.1322 at amendment 43, and 23.1353 at amendment 49. Further details of the certification basis for the installation of the G1000 EFIS are available on request.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Tiger Aircraft plans to incorporate certain novel and unusual design features into the AG-5B airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include an EFIS, which may be susceptible to the HIRF environment, that was not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by

damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50

Frequency	Field strength (volts per meter)	
	Peak	Average
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify either electrical or electronic systems that perform critical functions. The term “critical” means those functions, whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Tiger Aircraft AG–5B. Should Tiger Aircraft apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to

incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the AG–5B airplane modified by Tiger Aircraft, LLC to add the Garmin G1000 EFIS system.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or

cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

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

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-11669 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21373; Directorate Identifier 2005-SW-13-AD; Amendment 39-14119; AD 2005-12-03]

RIN 2120-AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S-92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S-92A helicopters. This action requires replacing the main gearbox (MGB) lubrication/scavenge pump vespel spline adapters (vespel spline adapters) before further flight, and thereafter, replacing them at certain intervals. This amendment is prompted by a reported incident of an in-flight loss of oil pressure. The actions specified in this AD are intended to prevent loss of lubrication to the MGB, which could cause failure of one or both engine input drives, or planetary gear to sun gear tooth mesh failure, resulting in loss of power to the rotor system and subsequent loss of control of the helicopter.

DATES: Effective June 29, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 29, 2005.

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

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically;

- *Government-wide Rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically;

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL-401, Washington, DC 20590;

- *Fax:* (202) 493-2251; or

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386-3001, fax (203) 386-5983.

Examining the Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Gaulzetti, Aviation Safety Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238-7156, fax (781) 238-7170.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Sikorsky Model S-92A helicopters that have MGB lubrication/scavenge pump, part number (P/N) 92351-15800-101, with vespel spline adapter, P/N 1584000-1, installed. This action requires, before further flight, removing the two vespel spline adapters and replacing them with airworthy vespel spline adapters, and thereafter, replacing them at intervals not to exceed 50 hours time-in-service (TIS). This amendment is prompted by a report of a loss of oil pressure during a flight to an offshore oil rig. Subsequent investigation, which is continuing, reveals that the vespel spline adapter installed on the helicopter failed due to excessive wear. The actions specified in this AD are intended to prevent loss of lubrication to the MGB, which could cause failure of one or both engine input

drives, or planetary gear to sun gear tooth mesh failure, resulting in loss of power to the rotor system and subsequent loss of control of the helicopter.

We have reviewed Sikorsky Aircraft Corporation Alert Service Bulletin (ASB) No. 92-63-001, dated April 1, 2005, which describes procedures for removing and replacing the vespel spine adapter. This AD differs from the manufacturer's ASB in that we are incorporating only the necessary portion of the Accomplishment Instructions of the ASB and do not require returning the replaced parts to the manufacturer, nor do we require providing a report to the manufacturer.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent loss of lubrication to the MGB, which could cause failure of one or both engine input drives, or planetary gear to sun gear tooth mesh failure, resulting in loss of power to the rotor system and subsequent loss of control of the helicopter. This AD requires removing the left-hand and right-hand main lubrication/scavenge pumps to access the vespel spline adapters and removing and replacing the vespel spline adapters before further flight and thereafter, at intervals not to exceed 50 hours TIS. Accomplish the actions in accordance with the ASB described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the initial replacement is required before further flight, and the repetitive replacements are required at intervals not to exceed 50 hours TIS, both of which are very short time periods, and this AD must be issued immediately.

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

We estimate that this AD will affect 4 helicopters of U.S. registry. Replacing both vespel spline adapters will take approximately 3 work hours to accomplish at an average labor rate of \$65 per work hour. Required parts will cost approximately \$350 for each of the two adapters, however, the manufacturer has stated that they will provide the replacement parts at no charge until the end of the warranty period for the vespel spline adapter. Based on these figures, we estimate the total cost impact of the AD on U.S.

operators to be \$2,180, assuming that one vespel spline adapter that is not covered by manufacturer's warranty is replaced on each helicopter.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-21373; Directorate Identifier 2005-SW-13-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Regulatory Findings

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

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

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

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005-12-03 Sikorsky Aircraft Corporation:
Amendment 39-14119. Docket No. FAA-2005-21373; Directorate Identifier 2005-SW-13-AD.

Applicability: Model S-92A helicopters with main gearbox (MGB) lubrication/scavenge pump, part number (P/N) 92351-15800-101, with vespel spline adapter, P/N 1584000-1, installed, certificated in any category.

Compliance: Required before further flight, unless accomplished previously, and thereafter, at intervals not to exceed 50 hours time-in-service.

To prevent loss of lubrication to the MGB, which could cause failure of one or both engine input drives, or planetary gear to sun gear tooth mesh failure, resulting in loss of power to the rotor system and subsequent loss of control of the helicopter, accomplish the following:

- (a) Remove and replace each MGB lubrication/scavenge pump vespel spline

adapter in accordance with paragraph 3.A., steps (1) through (6) of the Accomplishment Instructions in Sikorsky Aircraft Corporation Alert Service Bulletin No. 92-63-001, dated April 1, 2005.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, for information about previously approved alternative methods of compliance.

(c) The removals and replacements shall be done in accordance with paragraph 3.A., steps (1) through (6) of the Accomplishment Instructions in Sikorsky Aircraft Alert Service Bulletin No. 92-63-001, dated April 1, 2005. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386-3001, fax (203) 386-5983. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(d) This amendment becomes effective on June 29, 2005.

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

Carl F. Mittag,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05-11516 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21358; Directorate Identifier 2005-NM-088-AD; Amendment 39-14120; AD 2005-12-04]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757-200, -200PF, and -200CB Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757-200, -200PF, and -200CB series airplanes. This AD requires repetitive inspections of the shim installation between the vertical flange and bulkhead. This AD is prompted by reports of cracks, loose and

broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting. We are issuing this AD to detect and correct such cracks, loose and broken bolts, and shim migration, which could result in damage to the strut and consequent separation of the strut and engine from the airplane.

DATES: Effective June 29, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the **Federal Register** as of June 29, 2005.

We must receive comments on this AD by August 15, 2005.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide Rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

You can examine the contents of this AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA-2005-21358; the directorate identifier for this docket is 2005-NM-088-AD.

Examining the Dockets

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

FOR FURTHER INFORMATION CONTACT:

Dennis Stremick, Aerospace Engineer,

Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6450; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION: Boeing advises that, since 1993, it has received 17 reports of cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting on Boeing Model 757-200 series airplanes. Those conditions, if not corrected, could result in damage and consequent loss of the strut and engine from the airplane.

Other Relevant Rulemaking

On May 25, 2004, we issued AD 2004-12-07, amendment 13666 (69 FR 33561, June 16, 2004). That AD applies to Boeing Model 757 series airplanes, line numbers 1 through 735 inclusive, equipped with Rolls Royce RB211 engines.

That AD requires modification of the nacelle strut and wing structure; and inspections for loose/missing fasteners of certain aft bulkhead fasteners, proper alignment of the middle gusset of the inboard side load fitting, cracking of certain fastener holes; and corrective action if necessary. That AD cites various revision levels of Boeing Service Bulletin 757-54-0035 as the appropriate source of service information for the required actions.

That AD also mandated inspections of the 20 fasteners that are subject to this new AD. The threshold for those initial inspections is 15,000 total flight cycles. We have received reports of missing or loose fasteners in the affected joint as low as approximately 7,500 total flight cycles. In addition, that AD mandated inspections of the 20 fasteners of airplanes modified in accordance with Boeing Service Bulletin 757-54-0035 (original), but did not mandate inspections for airplanes modified in accordance with Revisions 1 or 2 of that service bulletin or airplanes that had been modified in production. Loose or missing fasteners have been found on airplanes with all versions of the modification.

The actions required by that AD were intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, but based on this service experience, we have concluded that the inspection requirements of that AD are not adequate.

Relevant Service Information

We have reviewed Boeing Service Bulletin 757-54A0047, Revision 1, dated March 24, 2005. The service bulletin describes procedures for

repetitive detailed inspections of the shim installation between the vertical flange and bulkhead. Specifically, the service bulletin provides procedures to:

- Inspect for damaged sealant around the shim;
- Inspect for signs of shim movement;
- Measure the horizontal and vertical movement of the shim from the installed position to determine the total cumulative movement of the shims;
- Inspect for signs of movement of the four fasteners in the vertical flange; and
- Detect signs of damaged paint and/or sealant or signs of movement of the 16 fasteners that hold the bulkhead assembly to the horizontal flange of the strut-to-diagonal brace fitting.

The service bulletin also describes four different interim repairs, depending on the amount of shim movement revealed during the inspections. The various interim repair actions include doing an eddy current inspection of the fastener holes for cracks, for which the service bulletin recommends contacting the manufacturer for repair instructions; replacing the shims with new shims; oversizing the holes and replacing discrepant fasteners with oversize fasteners; and applying sealant/primer on the shim of the vertical flange.

For airplanes modified in accordance with Service Bulletin 757-54-0035, the compliance time for the initial inspection is 6,000 flight cycles/36 months after the modification, with a grace period of 3,000 flight cycles/18 months. For unmodified airplanes, the compliance time is 90 days. The repetitive intervals range from 6,000 to 9,000 flight cycles/36 to 54 months. Interim repairs are due before further flight after a positive finding.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. Therefore, we are issuing this AD to detect and correct cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting. These conditions could result in damage to the strut and consequent separation of the strut and engine from the airplane. This AD requires accomplishing the actions specified in the service information described previously, except as discussed below.

Differences Between the AD and the Service Bulletin

The service bulletin specifies compliance times relative to the issue date of the service bulletin; this AD requires corresponding compliance times relative to the effective date of the AD.

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions using either a method that we approve, or data that meet the certification basis of the airplane and have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization whom we have authorized to make those findings.

Clarification of Certain Compliance Times

For Group 2 airplanes, the service bulletin specifies an inspection threshold relative to the date of issuance of the "original Airworthiness Certificate * * *" For these same airplanes, however, this AD requires an inspection threshold relative to the date of issuance of the "original standard airworthiness certificate * * *" We find that the addition of the term "standard" will establish this date with certainty.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-21358; Directorate Identifier 2005-NM-088-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you can visit <http://dms.dot.gov>.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

PART 39—AIRWORTHINESS DIRECTIVES

Adoption of the Amendment

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

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

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

§ 39.13 [Amended]

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

2005-12-04 Boeing: Amendment 39-14120. Docket No. FAA-2005-21358; Directorate Identifier 2005-NM-088-AD.

Effective Date

(a) This AD becomes effective June 29, 2005.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Boeing Model 757-200, -200PF, and -200CB series airplanes; certificated in any category; line numbers 1 through 1048 inclusive; powered by Rolls Royce engines.

Unsafe Condition

(d) This AD was prompted by reports of cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting. The FAA is issuing this AD to detect and correct such conditions, which could result in damage to the strut and consequent separation of the strut and engine from the airplane.

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

Service Information

(f) For purposes of this AD, "the service bulletin" refers to Boeing Service Bulletin 757-54A0047, Revision 1, dated March 24, 2005.

Inspections

(g) Inspect the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting, and repair any loose shim or loose, missing, or damaged fastener, by doing all actions at the times specified in the Accomplishment Instructions of the service bulletin, as applicable, except as required by paragraphs (i), (j), and (k) of this AD.

(h) An inspection and corrective actions done before the effective date of this AD in accordance with paragraph (b) or (c), as applicable, of AD 2004-12-07, amendment 39-13666, are acceptable for compliance

with the initial inspection requirement of paragraph (g) of this AD.

Exceptions to Service Bulletin Procedures

(i) Where the service bulletin specifies a compliance time relative to the issue date of the service bulletin, this AD requires compliance within the corresponding specified time relative to the effective date of this AD.

(j) For purposes of this AD, for Group 2 airplanes having line numbers 736 through 1048, the initial inspection must be done within the specified time after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness. The grace period for these airplanes is 3,000 flights from the effective date of this AD.

(k) If any crack is found during any inspection required by this AD, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the crack according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Alternative Methods of Compliance (AMOCs)

(l) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(m) You must use Boeing Service Bulletin 757-54A0047, Revision 1, dated March 24, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to <http://www.archives.gov/>

federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on May 26, 2005.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 05-11515 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2004-18998; Directorate Identifier 2003-NM-253-AD; Amendment 39-14121; AD 2005-12-05]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-200, 737-300, 737-400, 737-500, 737-600, 737-700, 737-800, 737-900, 757-200, and 757-300 Series Airplanes; and McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-30, DC-10-30F, DC-10-40, MD-10-10F, MD-10-30F, MD-11, and MD-11F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain transport category airplanes. That AD currently requires modification of the reinforced flight deck door. This new AD expands the applicability of the existing AD and requires other actions related to the reinforced flight deck door. These other actions include modifying the door, inspecting and modifying wiring in the area, and revising the maintenance program to require more frequent testing of the decompression panels of the flight deck door. This AD is prompted by reports of discrepancies with the reinforced flight deck door. We are issuing this AD to prevent inadvertent release of the decompression latch and consequent opening of the decompression panel in the flight deck door, or penetration of the flight deck door by smoke or shrapnel, any of which could result in injury to the airplane flightcrew. This AD also requires finding and fixing wire chafing, which could result in arcing, fire, and/or reduced controllability of the airplane.

DATES: This AD becomes effective July 19, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of July 19, 2005.

On July 25, 2003 (68 FR 41063, July 10, 2003), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207; or C&D Aerospace, 5701 Bolsa Avenue, Huntington Beach, California 92647-2063.

DOCKET: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL-401, Washington, DC. This docket number is FAA-2004-18998; the directorate identifier for this docket is 2003-NM-253-AD.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5224; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2003-14-04, amendment 39-13223 (68 FR 41063, July 10, 2003). The existing AD applies to certain Boeing Model 737-200, 737-300, 737-400, 737-500, 737-600, 737-700, 737-800, 737-900, 757-200, and 757-300 series airplanes; and McDonnell Douglas Model DC-10-10F, DC-10-30, DC-10-30F, DC-10-40, MD-10-30F, MD-11, and MD-11F airplanes. The proposed AD was published in the **Federal Register** on September 3, 2004 (69 FR 53848), to continue to require modification of the reinforced flight deck door. The proposed AD would also expand the applicability of the existing AD and require other actions related to the reinforced flight deck door. These other actions include modifying the door, inspecting and modifying wiring in the area, and revising the maintenance program to require more frequent testing of the decompression panels of the flight deck door.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Support and Conditional Support for the Proposed AD

One commenter supports the intent and language of the proposed AD.

A second commenter supports the proposed AD, provided that an adequate supply of parts is available for the modification to be accomplished within the proposed 18-month compliance time.

C&D Aerospace has indicated that they will be able to supply an adequate number of parts during the proposed compliance time. We have not changed the AD in this regard.

Request To Omit Requirement To Reduce Test Intervals

One commenter does not support reducing the interval for the repetitive functional test of the decompression panels of the flight deck door, which would be required by paragraph (i) of the proposed AD. (Paragraph (i) of the proposed AD would require revising the FAA-approved maintenance inspection program to include the information in C&D Aerospace Report CDRB22-69, Revision E, dated November 8, 2002. Revision E of that report reduces the repetitive interval for functional testing of the decompression panels of the flight deck door.) The commenter states that the proposed AD does not state a justification for a reduction in the testing intervals. The commenter states that the current inspection interval is sufficient. The commenter recommends that we gather and review more operational data before we increase the testing interval.

We do not concur. Our decision to require incorporating Revision E of C&D Aerospace Report CDRB22-69, and the increased testing frequency specified in that document, is based on analysis by the manufacturer, not on in-service findings. Testing of the decompression panels has been required only for a short time, and few inspections have been accomplished. For this reason, a lack of detected failures would not justify maintaining the current inspection interval. We also note that reinforced flight deck doors delivered after November 8, 2002 (the issue/approval date of Revision E of C&D Aerospace Report CDRB22-69), are already subject to the reduced repetitive

testing interval. We have not changed the final rule in this regard.

Request To Omit Requirement To Strengthen Smoke Screen

One commenter requests that we do not require strengthening the smoke screen on the flight deck door's decompression panels. The commenter states that this action is not cited in the proposed AD, and no service bulletin has been issued to support the strengthening of the smoke screen.

We do not agree. We find that it is necessary to require strengthening of the smoke screen on the flight deck door's decompression panels. This action is included in the modification required by paragraph (j) of this AD. The rationale for this decision is stated in the "Actions Since Existing AD Was Issued" section of the proposed AD: " * * * strengthening the smoke screens will allow the smoke screens to close properly and prevent smoke from entering the flight deck in the event of a fire in the airplane. Smoke in the flight deck could hinder the flightcrew's ability to continue to fly the airplane safely." The Relevant Service Information section of the proposed AD specifies that procedures for modifying the smoke screens are included in C&D Aerospace Service Bulletin B211200-52-02, Revision 2, dated September 29, 2003 (for certain McDonnell Douglas Model DC-10, MD-10, and MD-11 airplanes), and in C&D Aerospace Service Bulletin B251200-52-01, dated April 30, 2003 (for certain Model MD-11 airplanes). Table 3 of this AD references these service bulletins. We have not changed this AD in this regard.

Request To Omit Requirement To Install Placard

One commenter requests that we omit from paragraph (j) of the proposed AD the proposed requirement to install a placard. The commenter points out that the service bulletins specified in Table 3 of the proposed AD for Boeing Model 737 and 757 series airplanes include instructions for installing placards to show that the service bulletin has been done. The commenter states that it has contacted C&D Aerospace and C&D Aerospace is unable to provide additional placards should the original one be lost or need replacement. The commenter is concerned that the proposed wording of the AD would require it to install and maintain the placards to be in compliance with the proposed AD.

We agree that installing the placard is not necessary to address the unsafe

condition. We have revised paragraph (j) of this AD to state that, where the service bulletins referenced in Table 3 of this AD specify installing a placard to show that the service bulletin has been accomplished, this AD does not require that action.

Request To Omit Requirement To Rework Wiring

One commenter does not support the proposed requirement in paragraph (l)(1) that would require reworking the wiring for the flight deck door. The commenter feels that the rework is not needed, even though the door manufacturer has provided information to modify the airplane. The commenter states that its established operational procedures, including but not limited to a pre-flight operational check of the flight deck door by the flightcrew, obviate the need for the proposed wiring rework. Moreover, the commenter states that other operational procedures make it unlikely that security would be adversely affected if we were to omit the requirement to rework the wiring.

We do not agree. As we stated in the proposed AD, we have determined that an unsafe condition exists related to certain wiring in the area of the flight deck door on affected airplanes. For an unsafe condition such as this one, we can better ensure long-term continued operational safety by requiring modifications or design changes to remove the source of the problem, rather than by requiring repetitive inspections or operational tests. Long-term inspections or tests may not provide the degree of safety necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections/tests, has led us to consider placing less emphasis on special procedures and more emphasis on design improvements. The requirement in this AD to rework wiring in the area of the flight deck door is consistent with these considerations. We have not changed the AD in this regard.

Request for Credit for Accomplishment of Previous Service Bulletin Revisions

One commenter requests that we give credit for actions required by paragraph (j) of this AD that were accomplished in accordance with the issues of the service bulletins listed in the table below. The commenter states that the instructions for the modifications in these previous revisions are similar to the instructions in the service bulletins listed in Table 3 of the proposed AD.

CREDIT SERVICE BULLETINS

Service bulletin	Revision level	Date
C&D Aerospace Service Bulletin B211200-52-01	Original	February 27, 2003.
C&D Aerospace Service Bulletin B211200-52-01	1	March 7, 2003.
C&D Aerospace Service Bulletin B211200-52-01	2	June 3, 2003.
C&D Aerospace Service Bulletin B211200-52-02	Original	April 30, 2003.
C&D Aerospace Service Bulletin B221001-52-03	Original	December 6, 2002.
C&D Aerospace Service Bulletin B221001-52-03	1	January 2, 2003.
C&D Aerospace Service Bulletin B221001-52-03	2	February 20, 2003.
C&D Aerospace Service Bulletin B221001-52-01	Original	April 30, 2003.
C&D Aerospace Service Bulletin B231001-52-02	Original	December 6, 2002.
C&D Aerospace Service Bulletin B231001-52-02	1	January 2, 2003.
C&D Aerospace Service Bulletin B231001-52-02	2	February 20, 2003.
C&D Aerospace Service Bulletin B231001-52-02	3	March 7, 2003.

(The pages of C&D Aerospace Service Bulletin B231001-52-02, Revision 3, are each dated February 7, 2003. However, the Revision Transmittal Sheet is dated March 7, 2003. Since Revision 2 of that service bulletin is dated February 20, 2003, we have determined that March 7, 2003, is the correct date for Revision 3 of the service bulletin.)

We concur with the intent of the commenter's request. Actions accomplished before the effective date of this AD in accordance with the applicable service bulletin revisions identified by the commenter are acceptable for compliance with the corresponding requirement of paragraph (j) of this AD. However, after the effective date of this AD, required actions must be accomplished in accordance with the applicable service bulletin identified in Table 3 of this AD. We have added a new paragraph (l) to this AD (and re-identified subsequent paragraphs accordingly) and have added Table 4 to this AD to give credit for actions accomplished before the effective date of this AD.

Request To Refer to Latest Service Bulletin Revision and Give Credit for Prior Issues

One commenter requests that we revise paragraph (l)(1) of the proposed AD (which is identified as paragraph (m)(1) of this AD) to require C&D Aerospace Alert Service Bulletin B221001-52A05, Revision 3, dated October 3, 2003. Paragraph (l)(1) of the proposed AD refers to C&D Aerospace Alert Service Bulletin B221001-52A05, Revision 2, dated June 19, 2003, as the appropriate source of service information for the actions required by that paragraph. The commenter also requests that we give credit for actions done in accordance with C&D Aerospace Alert Service Bulletin B221001-52A05, dated April 17, 2003;

Revision 1, dated May 14, 2003; and Revision 2.

We concur with the intent of the commenter's request. The procedures in C&D Aerospace Alert Service Bulletin B221001-52A05, Revision 3, are similar to those in Revision 2 of that service bulletin. We have revised paragraph (m)(1) of this AD to require the rework of wiring be done in accordance with Revision 3 of the service bulletin. We have also revised paragraph (m)(1) to give credit for actions done before the effective date of this AD in accordance with the original issue, Revision 1, or Revision 2 of that service bulletin. However, only Revision 3 of the service bulletin is acceptable for actions accomplished on or after the effective date of this AD.

Request To Correct Incorrect References

One commenter requests that we revise the proposed AD to correct incorrect references. The commenter notes that the Costs of Compliance section and Table 3 of the proposed AD refer to C&D Aerospace Service Bulletin B251200-52-01, dated April 30, 2003, as an "alert" service bulletin. The commenter points out that C&D Aerospace Service Bulletin B251200-52-01 was not released as an alert service bulletin. We have revised all references to this service bulletin in this AD to remove "alert."

The commenter also notes that Table 1 does not refer to the correct supplemental type certificate (STC) that applies to Boeing Model 757 series airplanes. The commenter notes that the applicable STC number is ST01334LA. We have revised Table 1 of this AD accordingly.

Request To Refer to Latest Service Bulletin Issue

One commenter requests that we revise Table 2 of the proposed AD to

refer to C&D Aerospace Service Bulletin B211200-52-02, Revision 2, dated September 29, 2003, instead of Revision 1, dated June 3, 2003. The commenter notes that Revision 2 is the latest issue of that service bulletin.

We do not concur with this request. Table 2 of this AD restates the applicability of AD 2003-14-04 to establish which airplanes are subject to the actions required by paragraphs (f) and (g) of this AD. (Paragraphs (f) and (g) restate the requirements of AD 2003-14-04.) C&D Aerospace Service Bulletin B211200-52-02, Revision 1, was the issue referenced in the applicability of AD 2003-14-04. We note that paragraph (f)(3) of this AD, which requires accomplishment of certain actions in C&D Aerospace Service Bulletin B211200-52-02, references both Revisions 1 and 2 of that service bulletin. We have made no change in this regard.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 3,423 airplanes of the affected design worldwide.

The following table provides the estimated costs for U.S. operators to comply with the currently required actions that this AD will continue to require, at an average labor rate of \$65 per work hour.

ESTIMATED COSTS: EXISTING REQUIREMENTS OF AD 2003-14-04

Airplane Models	As listed in C&D Aerospace Service Bulletin—	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
737	B221001-52-03, Revision 3.	1	\$0	\$65	1,040	\$67,600
757	B231001-52-02, Revision 4.	2	0	130	519	67,470
DC-10, MD-10, MD-11	B211200-52-02, Revision 1.	2	0	130	21	2,730

The following table provides the estimated costs for U.S. operators to comply with the new actions that will

be required by this AD, at an average labor rate of \$65 per work hour.

ESTIMATED COSTS: NEW REQUIREMENTS

Airplane models	Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
737	Modification in C&D Aerospace Service Bulletin B221001-52-03, Revision 3.	1	\$0	\$65	Airplanes not modified under AD 2003-14-04.	N/A
737, 757	Revision of maintenance program.	1	None	65	651	\$42,315
737, 757	Modification in C&D Aerospace Service Bulletin B221200-52-01, Revision 1.	1	\$0	65	1,673	108,745
737-200	Modification in C&D Aerospace Alert Service Bulletin B221001-52A05, Revision 3.	1	None	65	134	8,710
737-200	Inspection in C&D Aerospace Alert Service Bulletin B221001-52A02.	2	None	130	134	17,420
757	Modification in C&D Aerospace Service Bulletin B231001-52-02, Revision 4.	2	\$0	130	Airplanes not modified under AD 2003-14-04.	N/A
DC-10, MD-11, MD-11F	Modification in C&D Aerospace Service Bulletin B211200-52-01, Revision 3.	1	\$0	65	155	10,075
DC-10, MD-10, MD-11	Modification in C&D Aerospace Service Bulletin B211200-52-02.	2	\$0	130	Airplanes not modified under AD 2003-14-04.	N/A
MD-11	Modification in C&D Aerospace Service Bulletin B251200-52-01.	1	\$0	65	6	390

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government.

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

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

We prepared a regulatory evaluation of the estimated costs to comply with

this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–13223 (68 FR 41063, July 10, 2003), and by adding the following new airworthiness directive (AD):

2005–12–05 Transport Category Airplanes:
Amendment 39–14121. Docket No. FAA–2004–18998; Directorate Identifier 2003–NM–253–AD.

Effective Date

(a) This AD becomes effective July 19, 2005.

Affected ADs

(b) This AD supersedes AD 2003–14–04, amendment 39–13223.

Applicability: (c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1.—AFFECTED AIRPLANE MODELS

Airplane manufacturer	Airplane model	Modified by Supplemental Type Certificate (STC)
Boeing	737–200, –300, –400, –500, –600, –700, –800, and –900 series	ST01335LA
Boeing	757–200 and –300 series	ST01334LA
McDonnell Douglas	DC–10–10, DC–10–10F, DC–10–30, DC–10–30F, DC–10–40, MD–10–10F, MD–10–30F, MD–11, and MD–11F.	ST01391LA

Unsafe Condition

(d) This AD was prompted by reports of discrepancies with the reinforced flight deck door. We are issuing this AD to prevent inadvertent release of the decompression latch and consequent opening of the decompression panel in the flight deck door, or penetration of the flight deck door by smoke or shrapnel, any of which could result in injury to the airplane flightcrew. We are also issuing this AD to find and fix wire chafing, which could result in arcing, fire,

and/or reduced controllability of the airplane.

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

Requirements of AD 2003–14–04

Note 1: Where there are differences between this AD and the referenced service bulletins, this AD prevails.

Modification

(f) For airplanes listed in Table 2 of this AD: Within 90 days after July 25, 2003 (the effective date of AD 2003–14–04, amendment 39–13223), modify the reinforced flight deck door according to paragraph (f)(1), (f)(2), or (f)(3) of this AD, as applicable.

TABLE 2.—AIRPLANE MODELS SUBJECT TO REQUIREMENTS OF AD 2003–14–04

Airplane manufacturer	Airplane model	As listed in C&D Aerospace Service Bulletin—
Boeing	737–200, –300, –400, –500, –600, –700, –800, and –900 series.	B221001–52–03, Revision 3, dated March 25, 2003
Boeing	757–200 and –300 series	B231001–52–02, Revision 4, dated March 19, 2003.
McDonnell Douglas	DC–10–10F, DC–10–30, DC–10–30F, DC–10–40, MD–10–30F, MD–11, and MD–11F.	B211200–52–02, Revision 1, dated June 3, 2003.

(1) For Boeing Model 737–200, –300, –400, –500, –600, –700, –800, and –900 series airplanes: Modify the upper and lower pressure relief latch assemblies on the flight deck door by doing all actions specified in and according to paragraphs 3.A., 3.B., and 3.C. of the Accomplishment Instructions of C&D Aerospace Service Bulletin B221001–52–03, Revision 3, dated March 25, 2003. One latch strap should be installed at the bottom of the upper pressure relief assembly, and a second latch strap should be installed at the top of the lower pressure relief assembly. When properly installed, the strap should cover a portion of the latch hook.

(2) For Boeing Model 757–200 and –300 series airplanes: Modify the upper and lower pressure relief latch assemblies on the flight deck door by doing all actions specified in and according to paragraphs 3.A., 3.B., and 3.C. of the Accomplishment Instructions of C&D Aerospace Service Bulletin B231001–52–02, Revision 4, dated March 19, 2003.

One latch strap should be installed at the bottom of the upper pressure relief assembly, and a second latch strap should be installed at the top of the lower pressure relief assembly. When properly installed, the strap should cover a portion of the latch hook.

(3) For McDonnell Douglas DC–10–10F, DC–10–30, DC–10–30F, DC–10–40, MD–10–30F, MD–11, and MD–11F airplanes: Install spacers in the upper and lower pressure relief latch assemblies of the flight deck door, by doing all actions specified in and according to paragraphs 3.A., 3.C., and 3.D. of C&D Aerospace Service Bulletin B211200–52–02, Revision 1, dated June 3, 2003; or Revision 2, dated September 29, 2003.

Modifications Accomplished Per Previous Issues of Service Bulletin

(g) For airplanes listed in Table 2 of this AD: Modifications accomplished before July 25, 2003, in accordance with a service bulletin listed in paragraph (g)(1), (g)(2), or

(g)(3) of this AD; as applicable; are considered acceptable for compliance with the corresponding action specified in paragraph (f) of this AD.

(1) For Boeing Model 737–200, –300, –400, –500, –600, –700, –800, and –900 series airplanes: C&D Aerospace Service Bulletin B221001–52–03, dated December 6, 2002; Revision 1, dated January 2, 2003; or Revision 2, dated February 20, 2003.

(2) For Boeing Model 757–200 and –300 series airplanes: C&D Aerospace Service Bulletin B231001–52–02, dated December 6, 2002; Revision 1, dated January 2, 2003; Revision 2, dated February 20, 2003; or Revision 3, dated March 7, 2003.

(3) For McDonnell Douglas DC–10–10F, DC–10–30, DC–10–30F, DC–10–40, MD–10–30F, MD–11, and MD–11F airplanes: C&D Aerospace Service Bulletin B211200–52–02, dated April 30, 2003.

Parts Installation

(h) As of July 25, 2003, no person may install, on any airplane, a reinforced flight deck door having any part number listed in the paragraph 1.A. of C&D Aerospace Service Bulletin B221001-52-03, Revision 3, dated March 25, 2003; B231001-52-02, Revision 4, dated March 19, 2003; or B211200-52-02, Revision 1, dated June 3, 2003; as applicable; unless the door has been modified as required by paragraph (f) of this AD.

New Requirements of This AD:

Model 737 and 757 Series Airplanes: Revise Maintenance Program

(i) For Model 737-200, -300, -400, -500, -600, -700, -800, and -900 series airplanes; and Model 757-200 and -300 series airplanes: Within 6 months after the effective date of this AD, revise the FAA-approved maintenance inspection program to include the information specified in C&D Aerospace Report CDRB22-69, Revision E, dated November 8, 2002.

Modifications to Flight Deck Door

(j) Modify the reinforced flight deck door by doing all applicable actions specified in the applicable service bulletin listed in Table 3 of this AD at the applicable compliance time specified in that table. Where the applicable service bulletin includes an instruction to install a placard to show that the service bulletin has been accomplished, this AD does not require that action.

TABLE 3.—NEW MODIFICATIONS TO THE FLIGHT DECK DOOR

For these models—	Equipped with a flight deck door assembly having this P/N—	Within this compliance time after the effective date of this AD—(months)	Do all actions in the accomplishment instructions of—
McDonnell Douglas DC-10-10, DC-10-10F, DC-10-30, DC-10-30F, DC-10-40, MD-10-10F, MD-10-30F, MD-11, and MD-11F airplanes.	B211200	6	C&D Aerospace Service Bulletin B211200-52-01, Revision 3, dated September 18, 2003.
McDonnell Douglas Model MD-11 and MD-11F airplanes.	B251200	6	C&D Aerospace Service Bulletin B251200-52-01, dated April 30, 2003.
Boeing Model 737-200, -300, -400, -500, -600, -700, -800, and -900 series airplanes; and Model 757-200 and -300.	B221200	18	C&D Aerospace Service Bulletin B221200-52-01, Revision 1, dated June 27, 2003
Boeing Model 737-200, -300, -400, -500, -600, -700, -800, and -900 series airplanes.	B221001	18	C&D Aerospace Service Bulletin B221001-52-03, Revision 3, dated March 25, 2003; except as provided by paragraph (k) of this AD.
Boeing Model 757-200 and -300 series airplanes ..	B231001	18	C&D Aerospace Service Bulletin B231001-52-02, Revision 4, dated March 19, 2003; except as provided by paragraph (k) of this AD.
McDonnell Douglas DC-10-10, DC-10-10F, DC-10-30, DC-10-30F, DC-10-40, MD-10-10F, MD-10-30F, MD-11, and MD-11F airplanes.	B211200	18	C&D Aerospace Service Bulletin B211200-52-02, Revision 1, dated June 3, 2003; or Revision 2, dated September 29, 2003, except as provided by paragraph (k) of this AD.

(k) For airplanes subject to paragraph (f) of this AD: Actions required by paragraph (f) of this AD that were done within the compliance time specified in paragraph (f) of this AD do not need to be repeated in accordance with paragraph (j) of this AD.

Modifications Accomplished Per Previous Issues of Service Bulletin

(l) Modifications accomplished before the effective date of this AD in accordance with an applicable service bulletin listed in Table

4 of this AD are considered acceptable for compliance with the corresponding action specified in paragraph (j) of this AD.

TABLE 4.—ACCEPTABLE SERVICE INFORMATION FOR PREVIOUS MODIFICATIONS

Service bulletin	Revision level	Date
C&D Aerospace Service Bulletin B211200-52-01	Original	February 27, 2003.
C&D Aerospace Service Bulletin B211200-52-01	1	March 7, 2003.
C&D Aerospace Service Bulletin B211200-52-01	2	June 3, 2003.
C&D Aerospace Service Bulletin B211200-52-02	Original	April 30, 2003.
C&D Aerospace Service Bulletin B221001-52-03	Original	December 6, 2002.
C&D Aerospace Service Bulletin B221001-52-03	1	January 2, 2003.
C&D Aerospace Service Bulletin B221001-52-03	2	February 20, 2003.
C&D Aerospace Service Bulletin B221200-52-01	Original	April 30, 2003.
C&D Aerospace Service Bulletin B231001-52-02	Original	December 6, 2002.
C&D Aerospace Service Bulletin B231001-52-02	1	January 2, 2003.
C&D Aerospace Service Bulletin B231001-52-02	2	February 20, 2003.
C&D Aerospace Service Bulletin B231001-52-02	3	March 7, 2003.

Model 737-200 Series Airplanes: Wiring Modification/Inspection

(m) For Model 737-200 series airplanes equipped with flight deck door assembly P/N B221001: Within 18 months after the effective date of this AD, do paragraphs (m)(1) and (m)(2) of this AD.

(1) Rework the wiring for the flight deck door to relocate a power wire for the flight deck door, in accordance with the Accomplishment Instructions of C&D Aerospace Alert Service Bulletin B221001-52A05, Revision 3, dated October 3, 2003. Actions accomplished before the effective date of this AD in accordance with C&D Aerospace Alert Service Bulletin B221001-

52A05, dated April 17, 2003; Revision 1, dated May 14, 2003; and Revision 2, dated June 19, 2003; are acceptable for compliance with the corresponding action required by this paragraph.

(2) Perform a general visual inspection for chafing of wire bundles in the area of the flight deck door and applicable corrective actions by doing all of the actions in the

Accomplishment Instructions of C&D Aerospace Alert Service Bulletin B221001–52A02, dated November 5, 2002. Any applicable corrective actions must be done before further flight.

Note 2: For the purposes of this AD, a general visual inspection is “a visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light and may

require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked.”

Parts Installation

(n) As of the effective date of this AD, no person may install a reinforced flight deck door under any STC listed in Table 1 of this AD, on any airplane, unless all applicable requirements of this AD have been done on the door.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the

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

(2) Alternative methods of compliance, approved previously in accordance with AD 2003–14–04, amendment 39–13223, are approved as alternative methods of compliance with this AD.

Material Incorporated by Reference

(p) You must use the service information that is specified in Table 5 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 5.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
C&D Aerospace Alert Service Bulletin B221001–52A02	Original	November 5, 2002.
C&D Aerospace Alert Service Bulletin B221001–52A05	3	October 3, 2003.
C&D Aerospace Service Bulletin B211200–52–01	3	September 18, 2003.
C&D Aerospace Service Bulletin B211200–52–02	1	June 3, 2003.
C&D Aerospace Service Bulletin B211200–52–02	2	September 29, 2003.
C&D Aerospace Service Bulletin B221001–52–03	3	March 25, 2003.
C&D Aerospace Service Bulletin B221200–52–01	1	June 27, 2003.
C&D Aerospace Service Bulletin B231001–52–02	4	March 19, 2003.
C&D Aerospace Service Bulletin B251200–52–01	Original	April 30, 2003.
C&D Aerospace Report CDRB22–69	E	November 8, 2002

(1) The Director of the Federal Register approves the incorporation by reference of the service information specified in Table 6

of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 6.—NEW MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
C&D Aerospace Alert Service Bulletin B221001–52A02	Original	November 5, 2002.
C&D Aerospace Alert Service Bulletin B221001–52A05	3	October 3, 2003.
C&D Aerospace Service Bulletin B211200–52–01	3	September 18, 2003.
C&D Aerospace Service Bulletin B211200–52–02	2	September 29, 2003.
C&D Aerospace Service Bulletin B221200–52–01	1	June 27, 2003.
C&D Aerospace Service Bulletin B2105200–52–01	Original	April 30, 2003.
C&D Aerospace Report CDRB22–69	E	November 8, 2002.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information specified

in Table 7 of this AD as of July 25, 2003 (68 FR 41063, July 10, 2003).

TABLE 7.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
C&D Aerospace Service Bulletin B211200–52–02	1	June 3, 2003.
C&D Aerospace Service Bulletin B221001–52–03	3	March 25, 2003.
C&D Aerospace Service Bulletin B231001–52–02	4	March 19, 2003.

(3) To get copies of the service information, go to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; or C&D Aerospace, 5701 Bolsa Avenue, Huntington Beach, California 92647–2063. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service

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

Issued in Renton, Washington, on May 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11514 Filed 6–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2005-20589; Directorate Identifier 2005-CE-12-AD; Amendment 39-14125; AD 2005-12-09]

RIN 2120-AA64

Airworthiness Directives; GROB-WERKE Model G120A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all GROB-WERKE (GROB) Model G120A airplanes. This AD requires you to repetitively inspect the nose landing gear (NLG) assembly, paying special attention to the NLG swivel tube and the engine truss in the area of the NLG attachment, for cracks and damaged (defective) welding seams. If you find cracks or defects during any inspection, this AD requires you to replace the cracked or defective part. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct cracks and defects in the NLG assembly, which could result in failure of the NLG. This failure could lead to a hard landing and/or loss of control of the airplane during landing operations.

DATES: This AD becomes effective on July 28, 2005.

As of July 28, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D-86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400

Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-2005-20589; Directorate Identifier 2005-CE-12-AD.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:**Discussion**

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all GROB Model G120A airplanes. The LBA reports cracks found on the nose landing gear (NLG) swivel tube on one of the affected airplanes during routine maintenance.

What is the potential impact if FAA took no action? If not detected and corrected, cracks and defects in the nose landing gear assembly could cause the nose landing gear to fail. This failure could lead to a hard landing and/or loss of control of the airplane during landing operations.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all GROB Model G120A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 13, 2005 (70 FR 19340). The NPRM proposed to require you to repetitively inspect the nose landing gear (NLG) assembly, paying special attention to the NLG swivel tube and the engine truss in the area of the NLG attachment, for cracks and damaged (defective) welding seams. The NPRM also proposed to require you to replace any cracked or defective part.

Is there a modification I can incorporate instead of repetitively inspecting the nose landing gear assembly? The FAA has determined that long-term continued operational safety would be better assured by design

changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, FAA will continue to work with GROB to collect information and perform fatigue analysis in determining whether a future design change is feasible.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 6 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do the inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × \$65 an hour = \$65	Not applicable	\$65	\$65 × 6 = \$390.

The cost for replacing any cracked or defective part based on the results of the inspections will be covered under warranty by the manufacturer.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49

of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA

Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA-2005-20589; Directorate Identifier 2005-CE-12-AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005-12-09 Grob-Werke: Amendment 39-14125; Docket No. FAA-2005-20589; Directorate Identifier 2005-CE-12-AD.

When Does This AD Become Effective?

(a) This AD becomes effective on July 28, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model G120A airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct cracks and damage in the nose landing gear (NLG) assembly, which could result in failure of the NLG. This failure could lead to a hard landing and/or loss of control of the airplane during landing operations.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the nose landing gear (NLG) assembly for cracks or damages (defective) welding seams. Pay special attention to the NLG swivel tube and the engine truss in the area of the NLG attachment.	Initially inspect within the next 50 hours time-in-service (TIS) after July 28, 2005 (the effective date of this AD), unless already done. Repetitively inspect thereafter at intervals not to exceed 50 hours TIS.	Follow GRDB Service Bulletin No. MSB1121-055 dated November 26, 2004.
(2) If you find cracks or defects during any inspection required in paragraph (e)(1) of this AD, replace the cracked or defective part.	Replace before further flight after the inspection in which cracks and/or defects are found. After you replace the cracked or defective part, continue with the repetitive inspections required in paragraph (e)(1) of this AD at the 50 hours TIS intervals.	Follow GROB Service Bulletin No. MSB1121-055 dated November 26, 2004.

Note: The compliance time in this AD is different than the compliance time in GROB Service Bulletin No. MSB1121-055 dated November 26, 2004. The compliance time in this AD takes precedence over the compliance time in the service information.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum,

Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; facsimile: (816) 329-4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D-2004-514, effective date: December 9, 2004, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in GROB Service Bulletin No. MSB1121-055 dated November 26, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service

information, contact GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D-86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html or call (202) 741-6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-2005-20589; Directorate Identifier 2005-CE-12-AD.

Issued in Kansas City, Missouri, on June 6, 2005.

Kim Smith,

*Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 05-11614 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-05-21177; Directorate Identifier 2005-CE-26-AD; Amendment 39-14129; AD 2005-12-13]

RIN 2120-AA64

Airworthiness Directives; Cessna Aircraft Company Models 402C and 414A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2005-05-52 (70 FR 13362, March 21, 2005), which applies to all Cessna Aircraft Company (Cessna) Models 402C and 414A airplanes. AD 2005-05-52 currently requires you to eddy current inspect the forward wing spars and visually inspect the aft and auxiliary spars. This AD is the result of fatigue and crack growth analyses of the wings of these airplanes, recent cracks found on Model 402C airplanes, and the FAA's determination that repetitive inspections and a wing spar modification are necessary to address the unsafe condition. Consequently, this AD would require repetitive eddy current inspections, visual inspections, and a spar strap modification on each wing. You must retain the actions of AD 2005-05-52 until you do the modifications of this AD. The actions specified by this AD are intended to prevent wing spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control. FAA is also issuing AD 2005-12-12 to require the spar strap modification and long-term inspections on Models 401, 401A, 402, 402A, 402B, 411, and 411A airplanes.

DATES: This AD becomes effective on June 22, 2005.

As of June 22, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by August 3, 2005.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- *Fax:* 1-202-493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; facsimile: (316) 942-9006.

To view the comments to this AD, go to <http://dms.dot.gov>. The docket number is FAA-05-21177; Directorate Identifier 2005-CE-26-AD.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, ACE-118W, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4125; facsimile: (316) 946-4107.

SUPPLEMENTARY INFORMATION:

What Events Have Caused This AD?

Initial AD Action

FAA issued AD 99-11-13 (64 FR 29781, June 3, 1999), requiring inspections of the forward, aft, and auxiliary wing spars for cracks on Cessna Models 402C airplanes with repair or replacement as necessary. AD 99-11-13 also required the operator to report the results of the inspections to FAA. AD 99-11-13 resulted from an accident where the right wing of a Cessna 402C failed just inboard of the nacelle at Wing Station (WS) 87. Investigation revealed fatigue cracking of the forward main spar that initiated at the edge of the front spar forward lower spar cap. FAA determined the spar cap cracking could continue to develop over the life of the affected airplanes and issued AD 2000-23-01, Amendment 39-11971 (65 FR 70645, November 27, 2000), to require repetitive inspections of the forward, aft, and auxiliary wing spars for cracks on Cessna Models 402C airplanes with repair or replacement as necessary.

Accomplishment of the actions mandated by AD 2000-23-01 required following Cessna Service Bulletin MEB99-3, dated May 6, 1999.

Wing Analysis

Cessna analyzed the wing, including fatigue and crack growth analyses, on the affected airplanes. Analysis included:

- A determination of the probable location and modes of damage based on analytical results, available test data, and service information;
- Classical fatigue analyses;
- Crack growth and residual strength analyses including use of linear elastic fracture mechanics methods;
- Full-scale ground testing to validate analytical models; and
- A flight strain survey to develop stress spectra used in the analyses.

Based on the analysis, Cessna found that the eddy current method will not find the crack until it is .03 inch longer than the critical crack length. When the crack reaches the critical length, it is not reliably detectable because it is under the head of the fastener. Once the main spar cap is severed, the remaining structure will no longer meet the residual strength requirements. Wing separation could then occur under loading conditions less than those established for the design limit load.

Cessna reported only one instance where use of the NDI eddy current procedure detected cracks. There are other reported instances where cracks were detected visually on the aft flange in the wheel well area. The access doubler flanges cover a large percentage of the forward spar flange, hampering the effectiveness of visual inspections.

To meet industry NDI standards, cracks need to be found on Cessna Models 402C and 414A airplanes through NDI inspection methods with a 90-percent probability of detection at a 95-percent confidence level.

Cessna's analysis indicates the probability and confidence levels are not being met. The FAA concurs.

Action Based on Cessna's Analysis

We issued proposals to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include two ADs that would apply to Cessna Models 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, and 414A airplanes. These proposals (Docket Nos. 2002-CE-05-AD and 2002-CE-57-AD) published in the **Federal Register** as notices of proposed rulemaking (NPRMs) on May 15, 2003 (68 FR 26239 and 68 FR 26244). The NPRMs proposed the following:

- Docket No. 2002-CE-05-AD: applied to Cessna Models 401, 401A,

401B, 402, 402A, 402B, 411, and 411A airplanes and proposed to supersede AD 79-10-15 with a new AD that would require one of the following (depending on the aircraft configuration):

- ✓ *For airplanes that do not incorporate one of the specified Cessna Service Kits:* repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification on each wing spar; or
- ✓ *For airplanes that incorporate one of the specified Cessna Service Kits:* repetitively inspect the wing spar caps and straps for fatigue cracks and repair or replace the wing spar caps and straps as necessary.
- ✓ Docket No. 2002-CE-57-AD: applied to Cessna Models 402C and 414A airplanes and proposed to supersede AD 2000-23-01 with a new AD that would require you to:
- ✓ Inspect the wing spar caps for fatigue cracks;
- ✓ Repair or replace the wing spar caps as necessary; and
- ✓ Incorporate a spar strap modification on each wing spar.

The FAA invited interested persons to participate in the development of these amendments during the original 75-day comment periods. We extended the comment periods for another 30 days and then reopened the comment periods for another 60 days. We received numerous comments on the NPRMs.

In addition, FAA held two public meetings: One on March 3 and 4, 2004, in Herndon, Virginia, and another on August 18, 2004, in Kansas City, Missouri. The public meetings allowed an open flow of communication among FAA, the public, and industry on issues related to the NPRMs.

After analyzing all information related to this subject, FAA decided not to issue the ADs as proposed, and that the best way to address the unsafe condition is for FAA, the public, and industry to develop alternative solutions to address the unsafe condition.

Therefore, FAA withdrew the two NPRMs and gathered the necessary information to address the situation. That information led to FAA's determination, at that time, to initiate AD action against the Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes; and not against the Models 402C and 414A airplanes. The plan was to address the action through the regular rulemaking process with a notice of proposed rulemaking.

Most Recent Service History

In 2005, the FAA received reports of (and analyzed data from) cracks found

in the wings of two Cessna Model 402C airplanes.

On the first airplane, information indicated the airplane had severe cracking on its left wing in the vicinity of the forward spar and outboard engine beam. The main lower spar cap had completely failed at about Wing Station (WS) 114. The airplane had cracks in the lower wing skin and the web splice doubler. Also found were two popped rivets: One between the heat shield and the wing skin and another between the factory installed web splice doublers and web. The airplane had 20,355 total hours time-in-service (TIS).

During the airplane's most recent flights before the cracking was found, the pilot noticed that roll trim was required. The flights required the pilot to use aileron trim to maintain level flight. The airplane landed safely and inspection revealed the cracks.

On the second airplane, fatigue cracks were found at about WS 114 in the main lower spar cap of another Model 402C airplane that had over 20,000 total hours TIS. Fatigue analysis shows that similar fatigue cracks could also develop in the wings of the Model 414A airplanes.

Logbook records indicated that both airplanes with cracked spars were in compliance with AD 2000-23-01. The FAA received a third report of another cracked spar found at WS 114 on one of the two Model 402C incident airplanes.

Therefore, FAA issued Emergency AD 2005-05-51 to detect and correct cracking in the wing spars of the Cessna Models 402C and 414A airplanes before the cracks grow to failure. Such a wing failure could result in the wing separating from the airplane with consequent loss of control of the airplane.

Emergency AD 2005-05-51 superseded AD 2000-23-01 and:

- Required the visual inspections of the forward, aft, and auxiliary wings spars for cracks more frequently on Model 402C airplanes including special emphasis areas;
- Added inspection requirements for the Model 414A airplanes; and
- Included provisions to position the airplane to a home base, hangar, maintenance facility, *etc.*

Emergency AD 2005-05-51 did not affect those airplanes that incorporated a spar strap modification on each wing following the original release of (or a later FAA-approved revision to) Cessna Service Bulletin MEB02-5 and Cessna Service Kit SK402-47 (currently at MEB02-5 Revision 2 and SK402-47B).

Long-Term Continued Operational Safety

Emergency AD 2005-05-51 was considered an interim action to immediately require visual inspection of the forward, aft, and auxiliary wing spars for cracks. The intent was to immediately detect existing cracking before it grew to wing failure.

Cessna developed new inspection techniques (eddy current) for the forward spar that are more effective at detecting cracks before the structural integrity of the wing is compromised. These inspection techniques allow for longer intervals between repetitive inspections than in emergency AD 2005-05-51. Based on this, FAA issued AD 2005-05-52, Amendment 39-14022 (70 FR 13362, dated March 21, 2005).

However, based on the analysis and recent service history, the FAA has determined that the long-term operational safety of the Cessna airplanes addressed by AD 2005-05-52 can only be assured through the incorporation of a spar strap modification and long-term repetitive inspections. Since the Models 402C and 414A airplanes have a similar type design to that of Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes, FAA is also issuing AD 2005-12-12 to require the spar strap modification and long-term repetitive inspections on those airplanes.

What is the potential impact if FAA took no action? Wing spar cap failure caused by undetected fatigue cracks could result in loss of a wing with consequent loss of airplane control.

Is there service information that applies to this subject? Cessna has issued the following: Cessna Multi-engine Service Bulletin MEB02-5, Revision 2, dated August 2, 2004, and Service Kit SK402-47B, dated August 2, 2003.

This service information includes procedures for inspecting lower wing spar caps and incorporating a spar strap modification.

FAA's Determination and Requirements of the AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Cessna Aircraft Company Models 402C and 414A airplanes of the same type design, we are issuing this AD to detect and correct wing spar cap failure caused by undetected fatigue cracks. Such failure could result in loss

of a wing with consequent loss of airplane control.

What does this AD require? This AD supersedes AD 2005–05–52 with a new AD that incorporates the actions in the previously-referenced service bulletins and retains the actions of AD 2005–05–52 until you do the modifications of this AD.

Why do the compliance times of this AD range between 400 hours TIS and 800 hours TIS? We have established the compliance times based on risk analysis that also allows for compliance scheduling. The compliance time range is based on total hours TIS, which will address those high-usage airplanes first.

We are issuing this AD as a final rule; request for comments instead of a notice of proposed rulemaking (NPRM). We have evaluated comments from the previous AD actions on this subject and the two public meetings as well as the incidents that have occurred since (*e.g.*, the actions of Emergency AD 2005–05–52). Based on this, FAA has determined that addressing the unsafe condition with public comment prior to issuing this AD action is impracticable. The FAA will evaluate any new comments received and amend the AD as necessary.

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

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–05–21177; Directorate Identifier 2005–CE–26–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments

on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of

this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket FAA–05–21177; Directorate Identifier 2005–CE–26–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2005–05–52, Amendment 39–14022, and by adding a new AD to read as follows:

2005–12–13 Cessna Aircraft Company:
Amendment 39–14129; Docket No.
FAA–05–21177; Directorate Identifier
2005–CE–26–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on June 22, 2005.

Are Any Other ADs Affected by This Action?

(b) Yes. This AD supersedes AD 2005–05–52; Amendment 39–14022.

What Airplanes Are Affected by This AD?

(c) This AD affects Models 402C and 414A, all serial numbers, that are certificated in any category.

What is the Unsafe Condition Presented in This AD?

(d) This AD is the result of fatigue cracks found in the lower wing spar caps. We are issuing this AD to prevent wing spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

What Must I Do To Address This Problem?

(e) *Modification of the Wing Spars:*

(1) For Cessna Model 414A airplanes, serial numbers 414A0001 through 414A0047 and 414A0049 through 414A0200, incorporate a spar strap modification on each wing (Cessna Multi-Engine Service Kit SK402–47B, dated August 2, 2003), following Cessna Multi-Engine Service Bulletin MEB02–5, Revision 2, dated August 2, 2004, unless Cessna Multi-Engine Service Kit SK402–47, SK402–47A, or SK402–47B has already been done. The above modifications terminate the repetitive inspection requirements of AD 2005–05–52:

If you have equal to or more than—	But less than—	Modification of the lower Wing Spar Cap compliance times
(i) 12,000 hours time-in-service (TIS)	Not Applicable	Within 400 hours TIS after June 22, 2005 (the effective date of this AD).
(ii) 9,000 hours TIS on the wing or wing spar ...	12,000 hours TIS	Within 800 hours TIS after June 22, 2005 (the effective date of this AD).
(iii) 0 hours TIS on the wing or wing spar;	9,000 hours TIS	At whichever of the following occurs later: • Upon accumulating 9,000 hours TIS or • Within 800 hours TIS after June 22, 2005 (the effective date of this AD).

(2) For Cessna Model 402C airplanes, all serial numbers; and Model 414A airplanes, serial numbers 414A0201 through 414A1212, incorporate a spar strap modification on each wing (Cessna Multi-Engine Service Kit

SK402-47B, dated August 2, 2003), following Cessna Multi-Engine Service Bulletin MEB02-5, Revision 2, dated August 2, 2004, unless Cessna Multi-Engine Service Kit SK402-47, SK402-47A, or SK402-47B has

already been done. The above modifications terminate the repetitive inspection requirements of AD 2005-05-52:

If you have equal to or more than—	But less than—	Modification of the lower Wing Spar Cap compliance times
(i) 20,000 hours TIS	Not Applicable	Within 400 hours TIS after June 22, 2005 (the effective date of this AD).
(ii) 15,000 hours TIS on the wing or wing spar	20,000 hours TIS	Within 800 hours TIS after June 22, 2005 (the effective date of this AD).
(iii) 0 hours TIS on the wing or wing spar	15,000 hours TIS	At whichever of the following occurs later: • Upon accumulating 15,000 hours TIS on the wing or wing spar; or • Within 800 TIS after June 22, 2005 (the effective date of this AD).

(f) *Repetitive Inspection of the Wing Spar:* Until the modification in paragraph (e)(1) and (e)(2) of this AD is done, continue the repetitive eddy current inspections of the forward wing spars combined with visual inspections of the aft and auxiliary spars as

mandated by AD 2005-05-52. Do these inspections following the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin MEB99-3 (Model 402C) or Cessna Service Bulletin MEB00-7 (Model 414A), both at Revision 2

and both dated February 28, 2005. The modification required in paragraph (e)(1) and (e)(2) of this AD terminates the repetitive inspection requirements of AD 2005-05-52.

Affected airplanes	Eddy current and visual inspections	Repetitive Eddy current and visual inspection interval
(1) For Model 414A airplanes, serial numbers 414A0001 through 414A0047 and 414A0049 through 414A0200.	At whichever of the following occurs later: • Upon accumulating 8,500 hours TIS on the airplane; • At the next inspection that would have been required by emergency AD 2005-05-51 (required at intervals not to exceed 15 hours TIS); or • Within the next 2 days after the March 21, 2005 (the effective date of AD 2005-05-52) (2 days after receipt for those who received this AD as an emergency AD)	Thereafter at intervals not to exceed 100 hours TIS.
(2) For the following airplanes that have 15,000 hours or more TIS or upon accumulating 15,000 hours TIS: (i) All Model 402C airplanes. (ii) Model 414A airplanes, serial numbers 414A0201 through 414A1212.	At whichever of the following occurs later: • Upon accumulating 15,000 hours TIS on the airplane; • At the next inspection that would have been required by emergency AD 2005-05-51 (required at intervals not to exceed 15 hours TIS); or • Within the next 2 days after March 21, 2005 (the effective date of AD 2005-05-52) (2 days after receipt for those who received this AD as an emergency AD).	Thereafter at intervals not to exceed 100 hours TIS.

(g) If the wings or wing spars were replaced with new or used wings or wing spars during the life of the airplane and logbook records

positively show the TIS of the wings or wing spars, then initially inspect and modify at

applicable wing or wing spar times in paragraphs (e)(1), (e)(2), and (f) of this AD.

(h) If the wings or wing spars were replaced with new or used wings or wing spars during the life of the airplane and logbook records cannot positively show the TIS of the wings or wing, then inspect and modify within 400 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.

(i) For all Cessna Models 402C and 414A airplanes with Cessna Service Kit SK402-47, SK402-47A, or SK402-47B incorporated, inspect and repair or replace as necessary prior to further flight after the inspection where cracks are found. Inspect following the procedures in Cessna Model 402C and 414A Supplemental Inspection Document (SID), Inspection ID 57-10-16 (compliance times in this AD take precedence over the compliance times in the SID): Initially upon accumulating 12,500 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after June 22, 2005 (the effective date of this AD), whichever occurs later, unless already done, and thereafter at intervals not to exceed 500 hours TIS. You may request an alternative method of compliance to adjust the compliance times for these inspections by following the procedures in 14 CFR 39.19 and this AD.

(j) *Wing Spar Replacement if Cracks Found During any Inspection Required by this AD:* Prior to further flight, replace the wing spar with a new wing spar or a used wing spar where wing or wing spar hours TIS can be positively identified. Do not install used wings spars when you are not able to positively identify total wing or wing spar hours TIS.

(k) *Reporting Requirement:* Report any cracks you find within 10 days after the cracks are found or within 10 days after June 22, 2005 (the effective date of this AD), whichever occurs later. Do not report if no cracks are found. Include in your report the aircraft serial number, aircraft TIS, wing spar cap TIS, crack location and size, corrective action taken, and a point of contact name and phone number. Send your report to Paul Nguyen, Aerospace Engineer, FAA, ACE-118W, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4125; facsimile: (316) 946-4107.

May I Request an Alternative Method of Compliance?

(l) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, ACE-118W, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4125; facsimile: (316) 946-4107.

Does This AD Incorporate Any Material by Reference?

(m) You must do the actions required by this AD following the instructions in Cessna Multi-Engine Service Bulletin MEB02-5, Revision 2, dated August 2, 2004, and Service Kit SK402-47B, dated August 2, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; facsimile: (316) 942-9006. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html or call (202) 741-6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-05-21177; Directorate Identifier 2005-CE-26-AD.

Issued in Kansas City, Missouri, on June 7, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-11613 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-05-21176; Directorate Identifier 2005-CE-25-AD; Amendment 39-14128; AD 2005-12-12]

RIN 2120-AA64

Airworthiness Directives; Cessna Aircraft Company Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 79-10-15, which applies to all Cessna Aircraft Company (Cessna) Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes. AD 79-10-15 currently requires repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and requires wing spar cap repair or replacement as necessary. This AD is the result of fatigue and crack growth

analyses of the wings of these airplanes, recent cracks found on similar design Model 402C airplanes, and the FAA's determination that repetitive inspections and a wing spar modification are necessary to address the unsafe condition. Consequently, this AD would require repetitive inspections and a spar strap modification on each wing. The actions specified by this AD are intended to prevent wing spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control. FAA is also issuing AD 2005-12-13 to require the spar strap modification and long-term inspections on Models 402C and 414A airplanes.

DATES: This AD becomes effective on June 22, 2005.

As of June 22, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by August 3, 2005.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- *Fax:* 1-202-493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; facsimile: (316) 942-9006.

To view the comments to this AD, go to <http://dms.dot.gov>. The docket number is FAA-05-21176; Directorate Identifier 2005-CE-25-AD.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, ACE-118W, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4125; facsimile: (316) 946-4107.

SUPPLEMENTARY INFORMATION:

What Events Have Caused This AD?

Initial AD Action

Reports of fatigue cracks of the wing spar lower cap areas caused FAA to issue AD 79-10-15, Amendment 39-3711 against Cessna Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes. AD 79-10-15 currently requires repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and wing spar cap repair or replacement as necessary.

Accomplishment of the actions mandated by AD 79-10-15 currently requires following Cessna Service Bulletin ME79-16, Revision 3, dated February 8, 1980.

AD 79-10-15 allows for the incorporation of Cessna Service Kit SK402-36 or SK411-56 on the front wing spar lower cap as terminating action for the repetitive inspections on the applicable wing.

In addition to AD 79-10-15, FAA issued AD 99-11-13 (64 FR 29781, June 3, 1999), requiring inspections of the forward, aft, and auxiliary wing spars for cracks on Cessna Models 402C airplanes with repair or replacement as necessary. AD 99-11-13 also required the operator to report the results of the inspections to FAA. AD 99-11-13 resulted from an accident where the right wing of a Cessna 402C failed just inboard of the nacelle at Wing Station (WS) 87. Investigation revealed fatigue cracking of the forward main spar that initiated at the edge of the front spar forward lower spar cap. FAA determined the spar cap cracking could continue to develop over the life of the affected airplanes and issued AD 2000-23-01, Amendment 39-11971 (65 FR 70645, November 27, 2000), to require repetitive inspections of the forward, aft, and auxiliary wing spars for cracks on Cessna Models 402C airplanes with repair or replacement as necessary. The Model 402C airplanes have a similar type design to that of the Models 401, 401A, 401B, 402, 402A, 402B, 411, 411A, and 414A airplanes.

Wing Analysis

Cessna analyzed the wing, including fatigue and crack growth analyses, on the affected airplanes. Analysis included:

- A determination of the probable location and modes of damage based on analytical results, available test data, and service information;
- Classical fatigue analyses;
- Crack growth and residual strength analyses including use of linear elastic fracture mechanics methods;
- Full-scale ground testing to validate analytical models; and

—A flight strain survey to develop stress spectra used in the analyses.

The inspections required by AD 79-10-15 following Cessna Service Bulletin ME79-16, Revision 3, use a nondestructive inspection (NDI) surface eddy current method.

Based on the analysis, Cessna found that the eddy current method will not find the crack until it is .03 inch longer than the critical crack length. When the crack reaches the critical length, it is not reliably detectable because it is under the head of the fastener. Once the main spar cap is severed, the remaining structure will no longer meet the residual strength requirements. Wing separation could then occur under loading conditions less than those established for the design limit load.

Cessna reported only one instance where use of the NDI eddy current procedure detected cracks. There are other reported instances where cracks were detected visually on the aft flange in the wheel well area. The access doubler flanges cover a large percentage of the forward spar flange, hampering the effectiveness of visual inspections.

To meet industry NDI standards, cracks need to be found on Cessna Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes through NDI inspection methods with a 90-percent probability of detection at a 95-percent confidence level.

Cessna's analysis indicates the probability and confidence levels are not being met. The FAA concurs.

Action Based on Cessna's Analysis

We issued proposals to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include two ADs that would apply to Cessna Models 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, and 414A airplanes. The proposals (Docket Nos. 2002-CE-05-AD and 2002-CE-57-AD) published in the **Federal Register** as notices of proposed rulemaking (NPRMs) on May 15, 2003 (68 FR 26239 and 68 FR 26244). The NPRMs proposed the following:

- Docket No. 2002-CE-05-AD: applied to Cessna Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes and proposed to supersede AD 79-10-15 with a new AD that would require one of the following (depending on the aircraft configuration):
 - ✓ *For airplanes that do not incorporate one of the specified Cessna Service Kits:* Repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification on each wing spar; or
 - ✓ *For airplanes that incorporate one of the specified Cessna Service Kits:*

Repetitively inspect the wing spar caps and straps for fatigue cracks and repair or replace the wing spar caps and straps as necessary.

- Docket No. 2002-CE-57-AD: applied to Cessna Models 402C and 414A airplanes and proposed to supersede AD 2000-23-01 with a new AD that would require you to:

- ✓ Inspect the wing spar caps for fatigue cracks;
- ✓ Repair or replace the wing spar caps as necessary; and
- ✓ Incorporate a spar strap modification on each wing spar.

The FAA invited interested persons to participate in the development of these amendments during the original 75-day comment periods. We extended the comment periods for another 30 days and then reopened the comment periods for another 60 days. We received numerous comments on the NPRMs.

In addition, FAA held two public meetings: One on March 3 and 4, 2004, in Herndon, Virginia, and another on August 18, 2004, in Kansas City, Missouri. The public meetings allowed an open flow of communication among FAA, the public, and industry on issues related to the NPRMs.

After analyzing all information related to this subject, FAA decided not to issue the ADs as proposed, and that the best way to address the unsafe condition is for FAA, the public, and industry to develop alternative solutions to address the unsafe condition.

Therefore, FAA withdrew the two NPRMs and gathered the necessary information to address the situation. That information led to FAA's determination, at that time, to initiate AD action against the Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes; and not against the Models 402C and 414A airplanes. The plan was to address the action through the regular rulemaking process with a notice of proposed rulemaking.

Most Recent Service History

In 2005, the FAA received reports of (and analyzed data from) cracks found in the wings of two Cessna Model 402C airplanes. The Model 402C airplanes have a similar type design to that of the Models 401, 401A, 401B, 402, 402A, 402B, 411, 411A, and 414A airplanes.

On the first airplane, information indicated the airplane had severe cracking on its left wing in the vicinity of the forward spar and outboard engine beam. The main lower spar cap had completely failed at about WS 114. The airplane had cracks in the lower wing skin and the web splice doubler. Also found were two popped rivets: One

between the heat shield and the wing skin and another between the factory installed web splice doublers and web. The airplane had 20,355 total hours time-in-service (TIS).

During the airplane's most recent flights before the cracking was found, the pilot noticed that roll trim was required. The flights required the pilot to use aileron trim to maintain level flight. The airplane landed safely and inspection revealed the cracks.

On the second airplane, fatigue cracks were found at about WS 114 in the main lower spar cap of another Model 402C airplane that had over 20,000 total hours TIS. Fatigue analysis shows that similar fatigue cracks could also develop in the wings of the Model 414A airplanes.

Logbook records indicated that both airplanes with cracked spars were in compliance with AD 2000-23-01. The FAA received a third report of another cracked spar found at WS 114 on one of the two Model 402C incident airplanes.

Therefore, FAA issued Emergency AD 2005-05-51 to detect and correct cracking in the wing spars of the Cessna Models 402C and 414A airplanes before the cracks could grow to failure. Such a wing failure could result in the wing separating from the airplane with consequent loss of control of the airplane.

Emergency AD 2005-05-51 superseded AD 2000-23-01 and:

- Required the visual inspections of the forward, aft, and auxiliary wing spars for cracks more frequently on Model 402C airplanes including special emphasis areas;
- Added inspection requirements for the Model 414A airplanes; and
- Included provisions to position the airplane to a home base, hangar, maintenance facility, etc.

Emergency AD 2005-05-51 did not affect those airplanes that incorporated a spar strap modification on each wing following the original release of (or a later FAA-approved revision to) Cessna Service Bulletin MEB02-5 and Cessna Service Kit SK402-47 (currently at MEB02-5 Revision 2 and SK402-47B).

Long-Term Continued Operational Safety

Emergency AD 2005-05-51 was considered an interim action to immediately require visual inspection of the forward, aft, and auxiliary wing spars for cracks. The intent was to immediately detect existing cracking before it grew to wing failure.

Cessna developed inspection techniques (eddy current) for the forward spar that are more effective at detecting cracks before the structural integrity of the wing is compromised.

These inspection techniques allow for longer intervals between repetitive inspections than in emergency AD 2005-05-51. Based on this, FAA issued AD 2005-05-52, Amendment 39-14022 (70 FR 13362, dated March 21, 2005). The inspection techniques addressed by AD 2005-05-52 for the Cessna Models 402C and 414A airplanes are similar to those required by AD 79-10-15 for the Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes.

However, based on the analysis and recent service history, the FAA has determined that the long-term operational safety of the Cessna airplanes addressed by both AD 2005-05-52 and AD 79-10-15 can only be assured through the incorporation of a spar strap modification and long-term repetitive inspections. Since Models 402, 401A, 401B, 402, 402A, 402B, 411, and 411A have a similar type design to that of Models 402C and 414A airplanes, FAA is also issuing AD 2005-12-13 to require the spar strap modification and long-term inspections on those airplanes.

What is the potential impact if FAA took no action? Wing spar cap failure caused by undetected fatigue cracks could result in loss of a wing with consequent loss of airplane control.

Is there service information that applies to this subject? Cessna has issued the following:

- Original issue dated September 24, 2001, and Revision 1, dated December 22, 2003, of both Cessna Multi-engine Service Bulletin MEB01-06 and Service Kit SK402-46A; and
- Original issue dated September 24, 2001, of both Cessna Multi-engine Service Bulletin MEB01-07 and Service Kit SK411-59.

This service information includes procedures for inspecting lower wing spar caps and incorporating a spar strap modification.

FAA's Determination and Requirements of the AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Cessna Aircraft Company Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes of the same type design, we are issuing this AD to detect and correct wing spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

What does this AD require? This AD supersedes AD 79-10-15 with a new AD that incorporates the actions in the previously referenced service bulletins.

Why do the compliance times of this AD range between 100 hours TIS and 800 hours TIS? We have established the compliance times based on risk analysis that also allows for compliance scheduling. Some of these airplanes utilize "for hire" operations and could accumulate as many as 200 hours TIS in a month. The compliance time range is based on total hours TIS, which will address those high-usage airplanes first.

We are issuing this AD as a final rule; request for comments instead of a notice of proposed rulemaking (NPRM). We have evaluated comments from the previous AD actions on this subject and the two public meetings as well as the incidents that have occurred since (e.g., the actions of Emergency AD 2005-05-52). Based on this, FAA has determined that addressing the unsafe condition with public comment prior to issuing this AD action is impracticable. The FAA will evaluate any new comments received and amend the AD as necessary.

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

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-05-21176; Directorate Identifier 2005-CE-25-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us

through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket FAA-05-21176; Directorate Identifier 2005-CE-25-AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 79-10-15, Amendment 39-3711, and by adding a new AD to read as follows:

2005-12-12 Cessna Aircraft Company:
Amendment 39-14128; Docket No. FAA-05-21176; Directorate Identifier 2005-CE-25-AD.

When Does This AD Become Effective?

(a) This AD becomes effective on June 22, 2005.

Are Any Other ADs Affected by This Action?

(b) Yes. This AD supersedes AD 79-10-15; Amendment 39-3711.

What Airplanes Are Affected by This AD?

(c) This AD affects Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of fatigue cracks found in the lower wing spar caps. We are issuing this AD to prevent wing spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

What Must I Do To Address This Problem?

(e) *Repetitive Inspection and Modification of the Wing Spars:*

(1) For Cessna Models 411 and 411A airplanes that do not incorporate Cessna Service Kit SK411-56, SK411-56A, SK411-56B, or SK411-59, maintain the repetitive inspections required by AD 79-10-15, Amendment 39-3711, and do the actions below. You may terminate the repetitive inspections of AD 79-10-15 after you incorporate the modification using the service information in paragraph (h)(2) of this AD:

If you have equal to or more than—	But less than—	Then initially inspect and modify using the service information in paragraph (h)(2) of this AD, and reinspect as specified in paragraph (e)(3) of this AD
(i) 18,000 hours time-in-service (TIS) on the wing or wing spar.	Not applicable	Within 1000 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.
(ii) 12,000 hours TIS on the wing or wing spar	18,000 hours TIS	Within 200 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.
(iii) 10,000 hours TIS on the wing or wing spar	12,000 hours TIS	Within 400 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.
(iv) 5,500 hours TIS on the wing or wing spar	10,000 hours TIS	Within 800 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.
(v) 0 hours TIS on the wing or wing spar	5,500 hours TIS	At whichever of the following occurs later: • Upon accumulating 5,500 hours TIS on the wing or wing spar; or • Within 800 TIS after June 22, 2005 (the effective date of this AD), unless already done.

(vi) If the wings or wing spars were replaced with new or used wings or wing spars during the life of the airplane and logbook records positively show the TIS of the wings or wing spars, then initially inspect and modify at applicable wing or

wing spar times in paragraphs (e)(1)(i) through (e)(1)(v) of this AD.

(vii) If the wings or wing spars were replaced with new or used wings or wing spars during the life of the airplane and logbook records cannot positively show the TIS of the wings or wing spars, then inspect

and modify within 100 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.

(2) For Cessna Models 401, 401A, 401B, 402, 402A, and 402B airplanes that do not incorporate Cessna Service Kit SK402-36, SK402-36A, SK402-36B, SK402-36C,

SK402–46, or SK402–46A, maintain the repetitive inspections required by AD 79–10–15, Amendment 39–3711, and do the actions

below. You may terminate the repetitive inspections of AD 79–10–15 after you incorporate the modification using the

service information in paragraph (h)(1) of this AD:

If you have equal to or more than—	But less than—	Then initially inspect and modify using the service information in paragraph (h)(1) of this AD, and reinspect as specified in paragraph (e)(4) of this AD
(i) 18,000 hours TIS on the wing or wing spar	Not applicable	Within 100 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.
(ii) 12,000 hours TIS on the wing or wing spar	18,000 hours TIS	Within 200 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.
(iii) 10,000 hours TIS on the wing or wing spar	12,000 hours TIS	Within 400 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.
(iv) 6,500 hours TIS on the wing or wing spar	10,000 hours TIS	Within 800 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.
(v) 0 hours TIS on the wing or wing spar	6,500 hours TIS	At whichever of the following occurs later: • Upon accumulating 6,500 hours TIS on the wing or wing spar; or • Within 800 TIS after June 22, 2005 (the effective date of this AD), unless already done.

(vi) If the wings or wing spars were replaced with new or used wings or wing spars during the life of the airplane and logbook records positively show the TIS of the wings or wing spars, then initially inspect and modify at applicable wing or wing spar times in paragraphs (e)(2)(i) through (e)(2)(v) of this AD.

(vii) If the wings or wing spars were replaced with new or used wings or wing spars during the life of the airplane and logbook records cannot positively show the TIS of the wings or wing spars, then inspect and modify within 100 hours TIS after June 22, 2005 (the effective date of this AD), unless already done.

(3) For all Cessna Models 411 and 411A airplanes with Cessna Service Kit SK411–56, SK411–56A, SK411–56B, or SK411–59 incorporated, inspect in the following areas and repair or replace as necessary prior to further flight after the inspection where cracks are found. Inspection areas and procedures are defined in the Cessna Model 411 Supplemental Inspection Document (SID):

(i) *Area “A” (Inspection ID 57–10–11):* Initially upon accumulating 5,500 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after June 22, 2005 (the effective date of this AD), whichever occurs later, unless already done, and thereafter at intervals not to exceed 2,500 hours TIS.

(ii) *Area “B” (Inspection ID 57–10–12):* Initially upon accumulating 5,500 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after June 22, 2005 (the effective date of this AD), whichever occurs later, unless already done, and thereafter at intervals not to exceed 1,000 hours TIS.

(iii) *Area “C” (Inspection ID 57–10–08):* Upon accumulating 20,000 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after June 22, 2005 (the effective date of this AD), whichever occurs later, unless already done, and thereafter at intervals not to exceed 2,000 hours TIS.

(4) For all Cessna Models 401, 401A, 401B, 402, 402A, and 402B airplanes with Cessna Service Kit SK402–36, SK402–36A, SK402–

36B, SK402–36C, SK402–46, or SK402–46A incorporated, inspect in the following areas and repair or replace as necessary prior to further flight after the inspection where cracks are found. Inspection areas and procedures are defined in the Cessna Models 401 and 402 SID (compliance times in this AD take precedence over the compliance times in the SID):

(i) *Area “A” (Inspection ID 57–10–11):* Initially upon accumulating 15,000 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after June 22, 2005 (the effective date of this AD), whichever occurs later, unless already done, and thereafter at intervals not to exceed 5,000 hours TIS.

(ii) *Area “B” (Inspection ID 57–10–12):* Initially upon accumulating 7,500 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after June 22, 2005 (the effective date of this AD), whichever occurs later, unless already done, and thereafter at intervals not to exceed 5,000 hours TIS. You may request an alternative method of compliance to adjust the compliance times for these inspections by following the procedures in 14 CFR 39.19 and this AD.

(iii) *Area “C” (Inspection ID 57–10–08):* Upon accumulating 20,000 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after June 22, 2005 (the effective date of this AD), whichever occurs later, unless already done, and thereafter at intervals not to exceed 2,500 hours TIS.

(f) *Wing Spar Replacement if Cracks Found During any Inspection Required by this AD:*

(1) Prior to further flight, replace the wing spar with a new wing spar or a used wing spar where wing or wing spar hours TIS can be positively identified. Do not install used wings spars when you are not able to positively identify total wing or wing spar hours TIS.

(2) After replacement, initially inspect at the applicable time in paragraphs (e)(1)(i) through (e)(1)(vii) or (e)(2)(i) through (e)(2)(vii) of this AD and repetitively inspect at the times specified in paragraphs (e)(3)(i) through (e)(3)(iii) or (e)(4)(i) through (e)(4)(iii) of this AD.

(g) *Reporting Requirement:* Report any cracks you find within 10 days after the cracks are found or within 10 days after June 22, 2005 (the effective date of this AD), whichever occurs later. Do not report if no cracks are found. Include in your report the aircraft serial number, aircraft TIS, wing spar cap TIS, crack location and size, corrective action taken, and a point of contact name and phone number. Send your report to Paul Nguyen, Aerospace Engineer, FAA, ACE–118W, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

(h) *Service Information to Perform the Actions of this AD:*

(1) Original issue dated September 24, 2001, and Revision 1, dated December 22, 2003, of both Cessna Multi-engine Service Bulletin MEB01–06 and Service Kit SK402–46A; and

(2) Original issue dated September 24, 2001, of both Cessna Multi-engine Service Bulletin MEB01–07 and Service Kit SK411–59.

May I Request an Alternative Method of Compliance?

(i) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, ACE–118W, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(j) You must do the actions required by this AD following the instructions in Cessna Multi-Engine Service Bulletin MEB01–6 and Service Kit SK402–46, both dated September 24, 2001; Cessna Multi-Engine Service

Bulletin MEB01-6, Revision 1 and Service Kit SK402-46A, both dated December 22, 2003; and Cessna Multi-Engine Service Bulletin MEB01-7 and Service Kit SK411-59, both dated September 24, 2001. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; facsimile: (316) 942-9006. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html or call (202) 741-6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-05-21176; Directorate Identifier 2005-CE-25-AD.

Issued in Kansas City, Missouri, on June 7, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-11612 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21443; Directorate Identifier 2005-NE-08-AD; Amendment 39-14124; AD 2005-12-08]

RIN 2120-AA64

Airworthiness Directives; Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A-1, and 2 B2 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A-1, and 2 B2 turboshaft engines. This AD requires replacing the software in the Engine Electronic Control Unit (EECU). This AD results from a report of simultaneous loss of automatic control of both engines of a Eurocopter Deutschland EC 135 helicopter, during flight. We are issuing this AD to prevent simultaneous loss of automatic control of both engines and subsequent loss of control of the helicopter.

DATES: Effective June 29, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 29, 2005.

We must receive any comments on this AD by August 15, 2005.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

• 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 Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT:

Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7175; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A-1, and 2 B2 turboshaft engines. The DGAC advises that a case of simultaneous loss of automatic control of the two Arrius 2 B1 engines occurred during a flight, on a Eurocopter Deutschland EC 135 helicopter. Simultaneous transition of both engines from automatic control to manual control could lead to subsequent loss of control of the helicopter. The engine control system's intolerance to the loss of steps on the fuel metering valve actuator causes the loss of automatic control. Loss of steps can lead to a FADEC FAIL indication of the full authority digital electronic control (FADEC) and cause the fuel flow metering valve to freeze up and transition to manual fuel flow control.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Mandatory Service Bulletin (MSB) No. 319 73 2080, Update No. 1, MSB No. 319 73 2081, Update No. 1, MSB No. 319 73 2082, Update No. 1, and MSB No. 319 73 2090, all dated February 13, 2004. These MSBs describe procedures for upgrading the engine control system software. This upgrade is applied by either replacing the EECU or by uploading the software. This upgrade improves the engine control system's ability to detect loss of pitch tolerances, and ability to tolerate the loss of steps on the fuel metering valve actuator. The DGAC classified these MSBs as mandatory and issued airworthiness directive F-2004-017 R1, dated March 3, 2004, in order to ensure the airworthiness of these Turbomeca turboshaft engines in France.

Bilateral Airworthiness Agreement

These engine models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the DGAC kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A-1, and 2 B2 turboshaft engines of the same type design. We are issuing this AD to prevent simultaneous loss of automatic control of both engines and subsequent loss of control of the helicopter. This AD requires within 90 days after the effective date of the AD, simultaneously, on both engines of the helicopter, performing a onetime upgrade of the software version, by either replacing the EECU or by uploading software. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before

issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. FAA-2005-21443; Directorate Identifier 2005-NE-08-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of 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 AD, 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.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005-12-08 Turbomeca S.A.: Amendment 39-14124. Docket No. FAA-2005-21443; Directorate Identifier 2005-NE-08-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 29, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A-1, and 2 B2 turboshaft engines. These engines are installed on, but not limited to, Eurocopter Deutschland GmbH EC 135 T1 and EC 135 T2 helicopters.

Unsafe Condition

(d) This AD results from a report of simultaneous loss of automatic control of both engines of a Eurocopter Deutschland EC 135 helicopter during flight. We are issuing this AD to prevent simultaneous loss of automatic control of both engines and subsequent loss of control of the helicopter.

Compliance

(e) You are responsible for having the actions required by this AD performed within 90 days after the effective date of this AD, unless the actions have already been done.

Onetime Upgrade of Engine Electronic Control Unit (EECU) Software

(f) Simultaneously, on both engines of the helicopter, perform a onetime upgrade of EECU software as follows:

- (1) Either replace the EECU; or
- (2) Upload the EECU software.
- (3) Use paragraph 2 of the applicable Turbomeca Mandatory Service Bulletin (MSB) listed in Table 1 of this AD, to do the onetime upgrade.

TABLE 1.—APPLICABLE MSBS

For—	Use—
Arrius 2 B1 engines with EECUs that have incorporated Modification TU 19C.	MSB No. 319 73 2080, Update No. 1, dated February 13, 2004.
Arrius 2 B1 engines with EECUs that have incorporated Modification TU 67C or TU 23C.	MSB No. 319 73 2081, Update No. 1, dated February 13, 2004.
Arrius 2 B1A and 2 B1A-1 engines.	MSB No. 319 73 2082, Update No. 1, dated February 13, 2004.
Arrius 2 B2 engines ...	MSB No. 319 73 2090, dated February 13, 2004.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(h) You must use the Turbomeca Mandatory Service Bulletins specified in Table 2 of this AD to perform the software upgrade required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for a copy of this service information. You may review copies at the Docket Management Facility; U.S.

Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001, on the internet at <http://dms.dot.gov>; or at the National Archives and Records Administration

(NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

TABLE 2.—INCORPORATION BY REFERENCE

Mandatory service bulletin No.	Page	Revision	Date
319 73 2080 Total Pages—6	ALL ...	1	February 13, 2004.
319 73 2081 Total Pages—6	ALL ...	1	February 13, 2004.
319 73 2082 Total Pages—6	ALL ...	1	February 13, 2004.
319 73 2090 Total Pages—7	ALL ...	Original ..	February 13, 2004.

Related Information

(i) DGAC airworthiness directive F-2004-017 R1, dated March 3, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on June 6, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate,
Aircraft Certification Service.

[FR Doc. 05-11611 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-ANE-07-AD; Amendment 39-14122; AD 2005-12-06]

RIN 2120-AA64

Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) S-20, S-1200, D-2000, and D-3000 Series Magnetos

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Teledyne Continental Motors (TCM) (formerly Bendix) S-20, S-1200, D-2000, and D-3000 series magnetos equipped with impulse coupling assemblies. That AD currently requires replacing riveted-impulse coupling assemblies and snap-ring coupling assemblies, which are worn beyond limits, with serviceable riveted-impulse coupling assemblies or snap-ring impulse coupling assemblies. This AD requires a reduced inspection interval for magnetos with riveted-impulse coupling assemblies installed on certain Lycoming engine models. This AD does not lower the inspection interval for magnetos with snap-ring impulse

coupling assemblies. This AD also limits the applicability to certain Lycoming engine models. This AD results from data provided by the manufacturer that shows a need to reduce the inspection intervals for riveted-impulse coupling assemblies used on certain Lycoming engine models. We are issuing this AD to prevent failure of the magneto impulse coupling assembly and possible engine failure.

DATES: This AD becomes effective July 19, 2005. The Director of the Federal Register previously approved the incorporation by reference of certain publications as listed in the regulations as of July 18, 1996 (61 FR 29934, June 13, 1996).

ADDRESSES: You can get the service information identified in this AD from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438-3411. For the Teledyne Continental Motors Web site: Go to <http://www.TCMLINK.com>.

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

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Senior Aerospace Engineer, Propulsion, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1 Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta,

GA, 30349; telephone (770) 703-6096, fax (770) 703-6097.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to TCM S-20, S-1200, D-2000, and D-3000 series magnetos equipped with impulse coupling assemblies. We published the proposed AD in the **Federal Register** on December 22, 2004 (69 FR 76632). That action proposed to require:

- An initial visual inspection of riveted-impulse coupling assemblies that have 100 or more hours time-since-new (TSN) or time-since-last-inspection (TSLI) on the effective date of the proposed AD, within 10 hours time-in-service (TIS) after the effective date of this AD, or
- An initial visual inspection of riveted-impulse coupling assemblies that have fewer than 100 hours TSN or TSLI on the effective date of the proposed AD, before accumulating 100 hours TSN or TSLI, and
- Repetitive inspections of riveted-impulse coupling assemblies within intervals of 100 hours TSLI.
- An initial visual inspection of snap-ring impulse coupling assemblies that have 450 or more hours TSN or TSLI on the effective date of the proposed AD, within 50 hours TIS after the effective date of the AD, or
- An initial visual inspection of snap-ring impulse coupling assemblies that have fewer than 450 hours TSN or TSLI before accumulating 500 hours TSN or TSLI, and
- Repetitive inspections of snap-ring impulse coupling assemblies within intervals of 500 hours TSLI.
- Replacing impulse coupling assemblies that fail the inspection.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between

8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Not Change the Eligibility From the Current AD

One commenter requests that we not change the eligibility from the current AD. The commenter states that experience has shown that the current AD is preventing failures and there is no difference between the wear or reliability of the impulse coupling assemblies installed on one make and model of engine, or another.

We do not agree. Responses we received to the Airworthiness Concern Sheet and Special Airworthiness Information Bulletin from owners and operators, and the manufacturer's data, indicate that there is a significant difference in the wear and reliability of magnetos installed on Lycoming 540 series engines as compared with other engines. Based on these responses, we have appropriately reduced the inspection interval for magnetos with riveted-impulse coupling assemblies installed on Lycoming 540 series engines.

Request To Not Change From the Current AD

One commenter states that without the current AD, owners and operators will not have the manufacturer's recommended maintenance performed, and safety will suffer.

We do not agree. While a small percentage of operators may not voluntarily comply with the manufacturer's recommended maintenance, we anticipate virtually all will comply. The response to the Airworthiness Concern Sheet, Special Airworthiness Information Bulletin, and manufacturer's data, indicates the AD is only needed for the Lycoming 540 series engines. This action does not negate the 500-hour inspection recommended by TCM. That inspection is part of the total inspection program to ensure the continued airworthiness of the engine. Therefore, we anticipate that safety will not suffer.

Addition of Description of Magneto Model Numbering System

To assist owners and operators, we have added the description of the magneto numbering system used for TCM S-20, S-1200, D-2000, and D-

3000 series magnetos to the compliance section of the AD.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect about 4,200 magnetos installed on airplanes of U.S. registry. We also estimate that it will take about 1 work hour per magneto to perform the actions, and that the average labor rate is \$65 per work hour. The reduced inspection interval will require doing the inspections about four times more often. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$1,092,000.

Special Flight Permits Paragraph Removed

Paragraph (d) of the current AD, AD 96-12-07, contains a paragraph pertaining to special flight permits. Even though this final rule does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new 14 CFR part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA-2004-8460, Amendment 39-9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 93-ANE-07-AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Amendment 39-9649 (61 FR 29934, June 13, 1996) and by adding a new airworthiness directive, Amendment 39-14122, to read as follows:

2005-12-06 Teledyne Continental Motors:
Amendment 39-14122. Docket No. 93-ANE-07-AD.

Effective Date

- (a) This AD becomes effective July 19, 2005.

Affected ADs

(b) This AD supersedes AD 96–12–07, Amendment 39–9649.

Applicability: (c) This AD applies to Teledyne Continental Motors (TCM) (formerly Bendix) magnetos that have a magneto part number (P/N) listed in Table 1 of TCM Mandatory Service Bulletin (MSB) No. MSB645, dated April 4, 1994, installed on Lycoming AEIO–540, HIO–540, IO–540, O–540, and TIO–540 series engines. These engines are installed on, but not limited to, airplanes manufactured by the Cessna Aircraft Company, Maule Aerospace Technology Corporation, Mooney Aircraft Corporation, The New Piper Aircraft Inc.,

and Raytheon Aircraft Company (Formerly Beech Aircraft Company).

Unsafe Condition

(d) This AD results from data provided by the manufacturer that indicates a need to reduce the inspection intervals for riveted-impulse coupling assemblies used on certain Lycoming engine models. We are issuing this AD to prevent failure of the magneto impulse coupling assembly and possible engine failure.

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

Initial Inspections of Impulse Coupling Assemblies

(f) For all magnetos that have a P/N listed in Table 1 of TCM MSB No. MSB645, dated April 4, 1994, that have never been inspected, perform an initial inspection of the impulse coupling assembly for wear using paragraphs 1.2 through 1.4.5 of the Detailed Instructions of TCM MSB No. MSB645, dated April 4, 1994. Use the following Table 1 for the compliance times. Snap-ring impulse coupling assemblies will have an “A” stamped in the lower-right quarter of the magneto data plate.

TABLE 1.—INITIAL INSPECTION COMPLIANCE TIMES

Engine Model	Type of impulse coupling assembly	Time on impulse coupling assembly on the effective date of this AD	Inspect
Lycoming AEIO–540, HIO–540, IO–540, O–540, and TIO–540 series engines.	(1) Riveted	(i) 100 or more hours time-since-new or overhaul (TSN) or if the TSN is unknown.	Within 10 hours time-in-service (TIS) after the effective date of this AD.
		(ii) Fewer than 100 hours TSN	Before accumulating 100 hours TSN.
	(2) Snap ring	(i) 450 or more hours TSN	Within 50 hours TIS after the effective date of this AD.
		(ii) Fewer than 450 hours TSN	Before accumulating 500 hours TSN.

(g) Replace any impulse coupling assembly that fails the inspection with a serviceable riveted or snap-ring impulse coupling assembly. Paragraphs 2 through 2.6 of the Detailed Instructions of TCM MSB No. MSB645, dated April 4, 1994 contain information on replacing the impulse coupling assembly.

(h) If you replace a snap-ring impulse coupling assembly with a riveted-impulse

coupling assembly, strike out the “A” on the magneto data plate.

Repetitive Inspections of Impulse Coupling Assemblies

(i) For all magnetos that have a P/N listed in Table 1 of TCM MSB No. MSB645, dated April 4, 1994, that have had an initial inspection as specified in paragraph (f) of this AD, perform repetitive inspections of the

impulse coupling assembly for wear using paragraphs 1.2 through 1.4.5 of the Detailed Instructions of TCM MSB No. MSB645, dated April 4, 1994. Use the following Table 2 for the compliance times. Snap-ring impulse coupling assemblies will have an “A” stamped in the lower-right quarter of the magneto data plate.

TABLE 2.—REPETITIVE INSPECTION COMPLIANCE TIMES

Engine model	Type of impulse coupling assembly	Inspect
Lycoming AEIO–540, HIO–540, IO–540, O–540, and TIO–540 series engines..	(1) Riveted	Within 100 hours time-since-last inspection (TSLI).
	(2) Snap ring	Within 500 hours TSLI.

(j) Replace any impulse coupling assembly that fails the inspection with a serviceable riveted or snap-ring impulse coupling assembly. Paragraphs 2 through 2.6 of the Detailed Instructions of TCM MSB No. MSB645, dated April 4, 1994 contain information on replacing the impulse coupling assembly.

(k) If you replace a snap-ring impulse coupling assembly with a riveted-impulse

coupling assembly, strike out the “A” on the magneto data plate.

Optional Terminating Action

(l) Installing a “Shower-of-Sparks” ignition system in place of a magneto system that has a riveted-impulse coupling assembly or a snap-ring impulse coupling assembly ends the repetitive inspection requirements specified in paragraph (i) of this AD. You can find more information on installing a

“Shower-of-Sparks” ignition system in TCM Service Information Letter No. SIL648, dated October 18, 1994.

Description of Magneto Model Numbering System

(m) To assist owners and operators, the description of the magneto numbering system used for TCM S–20, S–1200, D–2000, and D–3000 series magnetos is in the following Table 3:

TABLE 3.—MAGNETO NUMBERING SYSTEM

Code:	Signifies:
S or D	Ignition Type (Single or Dual)
6	Number of Cylinders
L or R	Direction of Rotation (Left-hand or Right-hand)
N (Not used on SC Models)	Manufacturer Designation

TABLE 3.—MAGNETO NUMBERING SYSTEM—Continued

Code:	Signifies:
SC (if applicable) –25, –1209, or –3200	Short Cover Configuration Magnetos Series
Examples:	Description:
S6LN–1209	Single type ignition, 6-cylinder engine, left-hand rotation, TCM (formerly Bendix), S–1200 series
D6RN–3200	Dual type ignition, 6-cylinder engine, right-hand rotation, TCM (formerly Bendix), D–3000 series
S6LSC–25	Single type ignition, 6-cylinder engine, left-hand rotation, short cover configuration, S–20 series

Alternative Methods of Compliance

(n) The Manager, Atlanta Aircraft 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

(o) TCM SB No. 639, dated March 1993, contains additional information for replacing impulse coupling assemblies on a TCM magneto. TCM Service Information Letter No. SIL648, dated October 18, 1994, contains information for converting an engine to a “Shower-of-Sparks” ignition system.

Material Incorporated by Reference

(p) You must use Teledyne Continental Motors Mandatory Service Bulletin No. MSB645, dated April 4, 1994 to perform the inspections and replacements required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin as of July 18, 1996 (61 FR 29934, June 13, 1996). You can get a copy from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411. For the Teledyne Continental Motors Web site: Go to <http://www.TCMLINK.com>. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Burlington, Massachusetts, on June 6, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–11610 Filed 6–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket FAA 2003–16460; Airspace Docket 02–ANM–16]

Amendment to Class E Airspace; Wray, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revise Class E airspace at Wray, CO. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) have been developed at Wray Municipal Airport. Additional Class E airspace extending upward from 700 feet above the surface is necessary for the safety of instrument flight rules (IFR) aircraft executing these new SIAPs and transitioning between the terminal and en route environment.

DATES: 0901 UTC May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:**History**

On October 21, 2003, the FAA published in the **Federal Register** a notice of proposed rule making to modify Class E airspace at Wray, CO (69 FR 32295). New RNAV GPS SIAPs at Wray Municipal Airport, Wray, CO, make it necessary to increase the controlled airspace.

Interested parties were invited to participate on this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M

dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at Wray Municipal Airport, Wray, CO. New RNAV GPS SIAPs at Wray Municipal Airport make it necessary to increase the Class E airspace. This additional controlled airspace extending upward from 700 feet or more above the surface of the earth is for the containment and safety of IFR aircraft transitioning to/ from the en route environment and executing these RNAV GPS SIAP procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ANM CO E5 Wray, CO [Revised]

Wray Municipal Airport
(Lat. 40°06'01"N., long. 102°14'27"W.)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Wray Municipal Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at airway V80 and long. 102°00'00"W.; thence south via long. 102°00'00"W.; thence west via V4; thence north via V169; thence east via V80; thence to the point of origin; excluding that airspace within Federal airways.

* * * * *

Issued in Seattle, Washington on May 24, 2005.

Danial T. Mawhorter,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–11671 Filed 6–13–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM05–15–000; Order No. 658]

Modification of Nuclear Plant Decommissioning Trust Fund Guidelines

Issued May 27, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its nuclear plant decommissioning trust fund (Fund)

guidelines to remove the requirement that the financial report that public utilities furnish to the Commission each year must show all purchases and sales of investments and substitute a requirement that public utilities must include in their report a summary amount for purchases of fund investments and a summary amount for sales of fund investments. All other reporting requirements in the special provisions that relate to Fund reports remain in place; e.g., records of individual purchases and sales of investments must still be maintained even if such individual transactions are not routinely reported. These modifications are the result of a review conducted by the Commission's Information Assessment Team (FIAT), identifying the Commission's current information collections, evaluating their original purposes and current uses, and proposing ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current collections. These changes in the Commission's regulations will reduce the reporting burden on the electric industry while simultaneously simplifying Fund reports and making it easier for the Commission to review them.

DATES: *Effective Date:* The rule will become effective upon July 14, 2005.

FOR FURTHER INFORMATION CONTACT: William O. Blome (Legal information), Office of the General Counsel, Division of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8426.

Joseph C. Lynch (Legal information), Office of the General Counsel, Division of Market Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8497.

SUPPLEMENTARY INFORMATION:

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

Introduction

1. This Final Rule deletes from the Commission's regulations the requirement that the nuclear plant decommissioning trust fund report that public utilities furnish to the Commission each year must show all purchases and sales of trust fund investments. This Final Rule instead requires that public utilities must include in their annual trust fund report, only a summary amount for purchases of fund investments and a summary amount for sales of fund investments. All other requirements in

the regulations pertaining to nuclear plant decommissioning trust funds remain in place, including maintaining records of each purchase or sale of a trust fund investment so that, as appropriate, the Commission may review them. These changes in the Commission's nuclear plant decommissioning trust fund regulations resulted from a review of the Commission's regulations conducted by the Commission's Information Assessment Team (FIAT) that was tasked to assess the Commission's information needs. The tasks identified to meet this mission included identifying all of the Commission's current information collections, through forms and filing requirements (electric, hydropower, natural gas, oil and general) and evaluating their original purposes and current uses, and proposing ways to reduce the reporting burden on industry through elimination, reduction, streamlining or reformatting of current collections. The modifications to the Commission's nuclear plant decommissioning trust fund regulations contained in this final rule will reduce the reporting burden on the electric industry, while simultaneously simplifying reports filed with and reviewed by the Commission.

Background

2. On June 16, 1995, the Commission issued Order No. 580,¹ establishing requirements for the formation, organization, and operation of nuclear plant decommissioning trust funds (Fund) and for Fund investments. Order No. 580 established requirements for the organization and operation of the Fund, and for the particular investments which the Fund may make.

3. Order No. 580 provided, among other things, that a Fund must be an external Fund and that a Fund Trustee must be independent of the public utility, have a net worth of at least \$100 million, exercise the care that a reasonable person would exercise in the same circumstances, keep accurate and detailed records, and open the Fund to inspection and audit.

4. Order No. 580 further provided that the Trustee may not invest in any securities of the public utility that owns the nuclear plant or in that public utility's affiliates, associates, successors or assigns and may only use the Fund to decommission the nuclear plant to

¹ *Nuclear Plant Decommissioning Trust Fund Guidelines*, Order No. 580, 60 FR 34109 (June 30, 1995), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,023 (1995), *order on reh'g*, Order No. 580–A, 62 FR 33342 (June 12, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,055 (1997) (Order No. 580).

which the Fund relates and to pay the administrative and other expenses of the Fund, including taxes. Public utilities are to deposit all decommissioning collections into the Fund at least quarterly and to refund all excess collections to customers in the manner that the Commission prescribes.

5. As relevant here, the public utility must submit to the Commission, by March 31 of each year, one original and three conformed copies of a financial report that shows for the previous calendar year: (a) The activity of the Fund during the period, including amounts received from the public utility, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity, and payment of Fund expenses, including taxes; and (b) Fund assets and liabilities at the beginning and end of the period (excluding the liability for decommissioning).

Discussion

6. The intent of this Final Rule is to clarify exactly what information should be submitted in the annual financial report to the Commission. Many public utilities include in their yearly reports of Fund activity every purchase and sale transaction that the Fund engaged in over the course of the year. This practice results in trust fund reports that are hundreds, and sometimes thousands, of pages long. It is difficult, and sometimes impossible, to find pertinent information. Some of the computerized files that the public utilities are forwarding to the Commission from their Trustees are so large that the Commission cannot open them, or they take an inordinately long time to access. While it is important for public utilities (and the Trustees) to maintain complete records, it is not necessary that the Commission routinely receive this volume of information each year for each Fund.

7. The difficulty arises from the inclusion of the phrase "purchases and sales of investments" in 18 CFR 35.33(d)(2). What the Commission needs is typically not information on every individual transaction, but summaries of purchases and sales transactions of Fund investments. When describing the activity of the Fund during the reporting period, public utilities with nuclear plants should only report to the

Commission the amounts that the Fund received from the public utility, the gains and losses from overall investment activity, disbursements from the Fund for decommissioning activity, payment of Fund expenses, including taxes, and the Fund assets and liabilities (excluding the liability for decommissioning) at the beginning and end of the reporting period. This is the information that the Commission routinely needs.

8. Accordingly, the Commission is deleting the phrase "purchases and sales of investments" from 18 CFR 35.33(d)(2) and substituting the requirement that public utilities must include in their filing a summary amount for purchases of Fund investments and a summary amount for sales of Fund investments.

9. The Commission is also adding an express requirement that, consistent with section 35.32(a)(7) of the Commission's regulations,² public utilities owning nuclear plants must maintain records of individual purchases and sales transactions until after decommissioning has been completed and any excess jurisdictional amounts have been returned to ratepayers in a manner that the Commission determines. Public utilities need not include these records in the yearly report furnished to the Commission. It was understood in Order No. 580 that the public utilities would maintain records of purchases and sales of Fund investments.³ They must do this to administer the Fund prudently. The Commission is now expressly incorporating this requirement into its regulations. That is, the Commission will now expressly require that public utilities continue to maintain records of individual purchases and sales of investments. At any time, of course, the Commission can review these records to ensure that the Fund is conforming to the Commission's nuclear plant decommissioning trust fund guidelines.⁴

Information Collection Statement

10. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection

requirements imposed by agency rule.⁵ Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The information collection requirements for this final rule are contained in FERC-516, "Electric Rate Filings" (1902-0096).

Estimated Annual Burden

11. This final rule clarifies the Commission's requirements regarding the organization and operation of Funds and the investment of Fund assets. The Commission estimates that the public reporting requirements for the information collection requirements at issue contained in this rule average two hours per response. Public utilities submit this information to the Commission on an annual basis. The Commission estimates that the number of respondents is 53. As there are an average of two responses per year by each affected public utility (a separate annual report is filed for each nuclear plant, and some respondents have interests in more than one nuclear plant), the annual burden associated with this information requirement is 212 hours. The burden estimate includes the time required to implement the revised standards, search existing data sources, gather and maintain the data needed, and complete and review the information.

12. As noted immediately above, the Commission currently receives reports from 53 companies.⁶ The Commission estimates that, under its current rules, it takes four hours to prepare and submit a report. By reducing the content of the report from filing each purchase and sales transaction to filing summary amounts for purchases and sales of fund investments, this final rule reduces the amount of time necessary to prepare and submit a report from four to two hours. The estimates shown in the table below reflect the total burden that the final rule will impose.

² 18 CFR 35.32(a)(7).

³ See 18 CFR 35.32(a)(5).

⁴ *Id.*

⁵ 5 CFR 1320.11.

⁶ This is a decrease from the 72 companies estimated in Order No. 580.

Data collection	Number of respondents	Number of hours	Average number of responses per year	Total annual hours
FERC-516	53	2	2	212

Title: Nuclear Plant Decommissioning Trust Fund Guidelines (FERC-516 [Electric Rate Filings]).

Action: Modification of collection.

OMB Control No. 1902-0096.

Respondents: Public utilities owning nuclear power plants.

Frequency of Responses: Annually.

Necessity of Information: The Commission uses the data collected in these information requirements to carry out its regulatory responsibilities under the Federal Power Act (FPA). The Commission's Office of Markets, Tariffs, and Rates uses the data for evaluating electric rate filings submitted by the industry. The Division of Financial Audits of the Office of Market Oversight and Investigations uses the data in assessing whether jurisdictional companies are complying with the requirements of the Uniform System of Accounts and the Commission's regulations.

Internal Review: The Commission has reviewed this amendment to its regulations to eliminate the necessity of reporting annually every individual purchase and sale of investments that the Fund has transacted during the year, and has determined that this modification of its regulations is necessary to facilitate its review of Fund activities. The modification, moreover, conforms to the Commission's plan for efficient information collection, communication, and management within the electric utility industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information/data retention requirements.

13. Interested parties may file comments regarding these burden estimates or any other aspect of this information collection requirement, including suggestions for reducing this burden, with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of Executive Director, Phone: (202) 502-8415, FAX (202) 273-0873, e-mail: michael.miller@ferc.gov]. Comments on the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for

the Federal Energy Regulatory Commission—(202) 395-4650.]

Environmental Analysis

14. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁷ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment—such as rules relating to information gathering, analysis, and dissemination and rules relating to electric rate filings under sections 205 and 206 of the FPA and the establishment of just and reasonable rates.⁸ This Final Rule involves information gathering and analysis, and the collection and subsequent investment of money to fund nuclear plant decommissioning affects the rates that public utilities charge under sections 205 and 206 of the FPA, and whether those rates are just and reasonable. Accordingly, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

15. The Regulatory Flexibility Act of 1980 (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities.⁹ Most public utilities to which the Final Rule would apply do not fall within the RFA's definition of small entity.¹⁰ Consequently, the Commission certifies

⁷ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,783 (1987).

⁸ 18 CFR 380.4(a)(5), (15).

⁹ 5 U.S.C. 601-12.

¹⁰ 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. 13 CFR 121.201.

that this Final Rule will not have "a significant economic impact on a substantial number of small entities."

Document Availability

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

17. From the Commission's Home Page on the Internet, this information is available in its eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

18. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance contact FERC Online Support at FERCOnlineSupport@FERC.gov or toll-free at (800) 208-3676, or for TTY, contact (202) 502-8659. Or you may e-mail the Public Reference Room at public.reference@ferc.gov.

Administrative Findings and Effective Date

19. The Administrative Procedure Act (APA)¹¹ requires rulemakings to be published in the **Federal Register**. The APA also mandates that an opportunity for comment be provided when an agency promulgates regulations. However, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.¹² The Commission finds that notice and comment are unnecessary to this rulemaking. As explained above, the Commission is merely clarifying the proper scope of an annual report required by its regulations regarding the reporting of information on nuclear

¹¹ 5 U.S.C. 551-559.

¹² 5 U.S.C. 553b(3)(B).

plant trust funds. This clarification does not change existing law or policy. It substantially reduces a reporting requirement and reduces the reporting burden on the electric industry. Accordingly, this rule is effective 30 days following publication in the **Federal Register**.

Congressional Notification

20. The Commission has determined, with the concurrence of the Administrator, Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.¹³ The Commission will submit this Final Rule to both houses of Congress and the General Accounting Office.¹⁴

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Linda Mitry,
Deputy Secretary.

■ In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 35.33 is amended by revising paragraph (d)(2) and adding paragraph (d)(4) to read as follows:

§ 35.33 Specific provisions.

* * * * *

(d) * * *

(2) Activity of the Fund during the period, including amounts received from the utility, a summary amount for purchases of fund investments and a summary amount for sales of fund investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including taxes; and

* * * * *

(4) Public utilities owning nuclear plants must maintain records of individual purchase and sales transactions until after decommissioning has been completed

and any excess jurisdictional amounts have been returned to ratepayers in a manner that the Commission determines. The public utility need not include these records in the financial report that it furnishes to the Commission by March 31 of each year.

* * * * *

[FR Doc. 05–11532 Filed 6–13–05; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 347 and 357

[Docket No. RM05–14–000; Order No. 656]

Revision of FERC Form No. 73, Oil Pipeline Data Filing Instructions

Issued May 27, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending the FERC Form No. 73, Oil Pipeline Service Life Data to allow for filing in an Excel spreadsheet, eliminate the filing requirement for utility codes, which are no longer used by the Commission, and update the filing instructions to delete references to outdated filing formats. These modifications resulted from a review conducted by the Commission's FERC Information Assessment Team (FIAT) of the Commission's current reporting and information collection requirements to evaluate their original purposes and current uses and to propose ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current collections. The information collected on FERC Form No. 73 assists the Commission in the selection of appropriate oil pipeline service lives and book depreciation rates. Some oil pipeline companies use the book depreciation rates to compute their operating expenses for accounting and cost of service purposes.

DATES: *Effective:* The rule will become effective August 15, 2005.

FOR FURTHER INFORMATION CONTACT:

Edward J. Fowlkes (Technical Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8772.

Joseph C. Athey (Technical Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8138.

Andrew L. Lyon (Legal Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8637.

SUPPLEMENTARY INFORMATION:

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

Introduction

1. The Federal Energy Regulatory Commission (Commission or FERC) is revising the "FERC Form No. 73, Oil Pipeline Service Life Data" which is used to collect service life depreciation data from oil pipeline companies.¹ This final rule will allow for filing in an Excel spreadsheet, eliminate the filing requirement for utility codes, which are no longer used by the Commission, and update the filing instructions to delete references to outdated filing formats. These modifications resulted from a review conducted by the Commission's FERC Information Assessment Team (FIAT) of the Commission's current reporting and information collections to evaluate their original purposes and current uses and to propose ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current collections. The Commission's objectives in issuing this rule are to reduce the reporting burden on oil pipeline companies and to make it easier for the Commission to process the data used in the analysis of oil pipeline depreciation rates and service lives.

Background

2. Commission jurisdiction over oil pipelines was transferred from the Interstate Commerce Commission (ICC) pursuant to sections 305 and 402 of the Department of Energy Organization Act (DOE Act)² and Executive Order No. 12,009.³ The scope of this Commission's jurisdiction over oil pipelines includes the authority to regulate their rates and charges for the transportation of oil in interstate commerce, and the authority to establish valuations. Section 705(a) of the DOE Act provides that the rules and regulations relating to functions transferred to this Commission will continue in effect until modified by the Commission. Commission regulations

¹ The revised format for FERC Form No. 73 will not be printed in the **Federal Register** or the Code of Federal Regulations. A copy of the revised form, including all instructions to the form, is available for request and review at the Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern Time), Room 2A, 888 First Street NE., Washington, DC 20426, (202) 502–8371.

² 42 U.S.C. 7155 nad 7172 (2000).

³ Providing for the Effectuation of the Department of Energy Organization Act, 42 FR 46267 (Sept. 13, 1977).

¹³ 5 U.S.C. 804(2).

¹⁴ 5 U.S.C. 801(a)(1)(A).

governing oil pipeline depreciation accounting for carrier property are set forth in the General Instructions to Title 18 CFR Part 352.⁴

3. Oil pipeline companies are required to submit depreciation information to the Commission pursuant to 1–8(b)(2) and 1–8(b)(3) of the General Instructions found at 18 CFR Part 352. These instructions require oil pipeline carriers to compute percentage rate studies for their depreciable property accounts, and to maintain records as to the service life and net salvage value of their property and property retirements.

4. The Commission uses the information reported via FERC Form No. 73 to conduct depreciation rate investigations of oil pipelines. The Commission also uses the information to determine appropriate oil pipeline service lives and book depreciation rates.⁵ Oil pipeline companies use book depreciation rates to compute the depreciation portion of their operating expenses when determining their cost of service.

5. This rule eliminates certain data currently collected from oil pipeline companies by modifying the Filing Instructions to conform to modern data automation formats and oil pipeline identification protocols. The changes

associated with FERC Form No. 73 will reduce the amount of time required by Commission Staff to process the data and reduce the reporting burden on affected pipelines.

Discussion

6. The current Filing Instructions request that pipelines submit all data on magnetic computer tape. The revised Filing Instructions eliminate this outdated electronic format. The Commission has eliminated all references to magnetic tape from the filing instructions. In addition, the Commission has added an option to provide FERC Form No. 73 data using an Excel spreadsheet format.

7. The Commission has reduced the Filing Instructions from 20 to 14 pages primarily as a result of the removal of the magnetic tape filing requirements. In addition, the Commission has revised the definitions code sequences for the A1 and S1 Schedule's definitions and reformatted the sample layouts for Schedules A1 and S1 to make them clearer and easier to read. Lastly, the Commission has updated the Filing Instruction's address for submitting completed Form 73's.

8. The Commission is eliminating the requirement to submit utility codes.

These codes were used in an analytical model previously used.

Information Collection Statement

9. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.⁶ The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Estimated Annual Burden

10. The Commission estimates that, on average, it will take respondents 40 hours per response and that approximately two percent of current oil pipelines would experience a change in status justifying a new depreciation schedule in any given year.

11. The estimate contained in the Final Rule for the time necessary to comply with the reporting requirement is an average. While such a submission may take more than 40 hours in some cases, we believe that in most instances compliance will take less time.

Data collection	Number of respondents	Number of hours/response	Number of responses/respondent	Total annual hours
FERC Form 73	2	40	2	80

As a result of changes in the Final Rule, we anticipate a burden hour reduction of 30 percent.

Title: Oil Pipeline Data for Depreciation Analysis.

Action: Amend filing instruction requirements.

OMB Control No. 1902–0019.

Respondents: Businesses or other for profit.

Frequency of Responses: On occasion.

Necessity of Information: To satisfy the reporting requirement, the Commission expects respondents to submit a transmittal letter including a description of the oil pipeline facilities' change in status and a narrative explaining whether (and, if so how) this change in status reflects a departure from the characteristics relied upon by the Commission in originally granting oil pipeline companies depreciation schedule changes. This information

assists the Commission in its determination of appropriate oil pipeline service lives and book depreciation rates.

Internal review: The Commission has reviewed the proposed amendment to its regulations to establish a reporting obligation for changes in status of oil pipeline facilities and has determined that these regulations are necessary to ensure the accurate calculation of oil pipeline service lives and book depreciation rates. These regulations conform to the Commission's plan for efficient information collection, communication, and management within the oil pipeline industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information/data retention requirements.

12. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Attention: Michael Miller, Office of the Executive Director, phone: (202) 502–8415, fax: (202) 273–0873, e-mail: michael.miller@ferc.gov. Comments on the proposed requirements of the subject rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Office for the Federal Energy Regulatory Commission, phone: (202) 395–4650.

Environmental Analysis

13. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a

⁴ Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act.

⁵ The definitions for "depreciation" and "service life" are set forth in 18 CFR Part 352.

⁶ 5 CFR 1320.11.

significant adverse effect on the human environment.⁷ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.⁸ This final rule is procedural in nature and therefore falls under this exception; consequently, no environmental assessment has been prepared for this rulemaking.

Regulatory Flexibility Act

14. The Regulatory Flexibility Act of 1980 (RFA)⁹ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.

15. The Commission concludes that the final rule would not have such an impact on small entities. Based on past experience, most of the oil pipelines having changes in status that would likely trigger a filing under the amended regulations would be entities that do not meet the RFA's definition of a small entity.¹⁰ Therefore, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Document Availability

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

⁷ *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

⁸ 18 CFR 380.4(a)(2)(ii).

⁹ 5 U.S.C. 601–612 (2000).

¹⁰ The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small pipeline for the transportation of crude oil or refined petroleum products as one that, including its affiliates, for the preceding fiscal year had fewer than 1,500 employees per entity. 13 CFR 121.201 (Section 486, Utilities, North American Industry Classification System, NAICS) (2004).

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

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

Administrative Findings and Effective Date

19. The Administrative Procedure Act (APA)¹¹ requires rulemakings to be published in the **Federal Register**. The APA also mandates that an opportunity for comment be provided when an agency promulgates regulations. However, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.¹² The Commission finds that notice and comment are unnecessary to this rulemaking. As explained above, the Commission is merely clarifying the scope of its regulations regarding the reporting of information on oil pipeline facility service life. This clarification does not change existing law or policy. It merely interprets an existing regulation in order to reduce a filing requirement thereby reducing the reporting burden on the oil pipeline industry. Accordingly, this rule is effective August 15, 2005.

Congressional Notification

20. The Commission has determined, with the concurrence of the Administrator, Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.¹³ The Commission will submit this Final Rule to both houses of Congress and the General Accounting Office.¹⁴

¹¹ 5 U.S.C. 551–559 (2000).

¹² 5 U.S.C. 553b(B) (2000).

¹³ 5 U.S.C. 804(2) (2000).

¹⁴ 5 U.S.C. 801(a)(1)(A) (2000).

21. These regulations are effective August 15, 2005.

List of Subjects in 18 CFR Parts 347 and 357

Oil pipeline depreciation studies, Data for depreciation studies.

By the Commission.

Linda Mitry,
Deputy Secretary.

[**Note:** This Appendix will not appear in the Code of Federal Regulations.]

Appendix

Form Approved

OMB No. 1920–0019

(Expires 03/31/05)

Instructions for Filing FERC Form No. 73—Oil Pipeline Service Life Data

The term "Federal Energy Regulatory Commission (FERC)" refers to the FERC or its predecessor the Federal Power Commission (FPC).

Federal Energy Regulatory Commission, Washington, DC 20426 (Form approved: OMB No. 1902–0019, expires 03/31/05).

FERC Form No. 73 Table of Contents

General Information

General Instructions

Schedule A1—Specific Instructions

—Sample Schedule A1

—Definitions

Schedule S1—Specific Instructions

—Sample Schedule S1

—Definitions

Appendix—Transaction Codes

Instructions for Filing Service Life Data—General Information

I. Purpose

During an investigation of an oil pipeline company's book depreciation rates, the Commission requests service life data as a part of its data request. This service life data, which may be initial data or an update to previously existing data, is collected on FERC Form No. 73. The information collected on FERC Form No. 73 is used as an input to assist the Commission in the selection of appropriate oil pipeline company service lives and book depreciation rates.

II. Who Must File

Any oil pipeline company who is directed by the Commission to file service life data during an investigation of the appropriateness of its book depreciation rates.

III. When To Submit

Service life data is reported to the Commission by an oil pipeline company only during a depreciation rate investigation.

IV. What To Submit

The Form No. 73 requires that actuarial or simulation service life data be set forth in a standardized format.

1. If you are not submitting this report in an electronic media format, submit an original and three (3) copies of this report. An Excel spreadsheet is an acceptable format.

2. Upon request of the Commission, the company must submit such additional supporting and clarifying data and information as may be specified.

V. Where To Submit

1. Submit this report to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

2. Hand deliveries can be made to: Office of the Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, NE., Washington, DC 20426.

General Instructions

1. Each reporting company may file either actuarial or simulation service life data. If a respondent chooses to file actuarial data, Schedule A1 would be filed. If a respondent chooses to file simulation data, Schedule S1 would be filed. The first or initial filing of service life data by a pipeline company with the Federal Energy Regulatory Commission (whether simulation data or actuarial data) should begin with the first year of company operations or 1940 whichever is later. Subsequent filings of service life data by a respondent pipeline company may contain the transaction data only from the year of the last report to the present.

2. Report all dollar items rounded to the nearest dollar. Commas, decimal points, and special characters should not be used.

3. The "Account Number" as used in this Form No. 73 consists of the three digit account number specified in the Uniform System of Accounts with a suffix of "P" for Product Lines, "C" for Crude Lines, or some other character, specified by the Commission, to designate a system or division of the respondent company. Thus, an account number for purposes of filing the Form No.

73 consists of four characters, three digits followed by one alphabetic character.

The Commission may provide additional special instructions for filing the Form No. 73 requesting a respondent to report service life data in greater detail than specified in the Uniform System of Accounts. In such instances, the respondent will add a one letter suffix, specified by the Commission, to the account number.

- For example, a respondent may be asked to report for its Product Line "Vehicles and Other Work Equipment", Account 165, by "Vehicles", with an account designator, "165PV", and "Other Work Equipment", with an account designator, "165PE".

Sources for Codes Used

1. Uniform System of Accounts for Oil Pipeline Companies—See Part 352—Uniform System of Accounts Prescribed for Oil Pipeline Companies, Chapter 1—Federal Energy Regulatory Commission, Title 18, "Code of Federal Regulations".

2. Transaction Codes—Transaction Codes are listed in the Appendix.

Specific Instructions

Service Life Data (Actuarial) Schedule A1

This schedule is sequenced by Account Number. A new page is started when a change in account occurs and the account name and account number is displayed as the top line in the body of the report.

Data for actuarial analysis of property accounts 102–186 is reported by vintage year from the date of initial operations to the present date. All activity (additions, retirements, transfers, and balances) is reported by Installation Year, Transaction Year, Transaction Code, and Ledger Value. Number of units, gross salvage, and cost of removal should be included where applicable.

Extreme care should be exercised in assigning Transaction Codes to each transaction in order that the analysis of data will produce meaningful results.

Every vintage year *must* begin with a Transaction Code "00", "11", "12", "13", "30", or "51". An entry will be made for each year following the vintage year in which some activity occurred for this account, (e.g., addition, retirement, etc.) listing the appropriate Transaction Code for the activity. Every vintage year *must* terminate with a Transaction Balance Code, "99".

In reporting Installation Year, Transaction Year, and Corrected Transaction Year, no date prior to 1940 is acceptable. For a respondent's initial report, a 1940 transaction year, "00" Transaction Code, may be used to report the net balance of property in service as of December 31, 1939. If a respondent commenced operations after 1940, in the initial filing of the Form No. 73, the respondent should report a Transaction Code "00" for the net balance of property in service as December 31 of the year preceding the year of commencement of operations. For a respondent's Update Report, each vintage will begin with an initial balance, Transaction Code "00", which should correspond to the ending balance, Balance Code "99", reported on the previous filing of the Form No. 73.

Installation Year, Transaction Year, Transaction Code, and Ledger Value must be reported for each transition. Unreported fields should be left blank.

Negative numbers must not be used except when "Corrected Transaction Year" field is used. If the "Corrected Transaction Year" field is used, Units, Ledger Value, Gross Salvage Value, and Cost of Removal may be negative as necessary to make corrections.

SCHEDULE A1.—SERVICE LIFE DATA

				(a) Pipeline Company Name: xxxxxxxxxxxx		(b) Schedule A1 (c) Page xxx	
				(d) From January 1, xxxx (e) to December 31, xxxx			
(f) Account Number: xxxx				(g) Account Name: xxxxxxxxxxxxxxxx			
Installation Year	Transaction Year	Corrected Transaction Year	Transaction Code	Number of Units	Ledger Value	Gross Salvage	Cost of Removal
(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)
xxxx	xxxx	xxxx	xx	xxxxxxx	xxxxxxx	x xxxx	xxxxxxx

DEFINITIONS OF ITEMS CONTAINED ON SCHEDULE A1

Schedule reference	Item name	Definition—Description
(a)	Pipeline Company Name	Name of pipeline filing report.
(b)	Schedule ID	Form Number A1.
(c)	Page Number	Sequential page numbers as needed.
(d)	Start Date	The beginning year for the service life data reported. The year will be reported as a four digit number and will be 1940 or later.
(e)	End Date	The ending year for the service life data being reported. The year will be reported as a four digit number.
(f)	FERC Account Number ..	Uniform System of Accounts number associated with the service life data reported on this page with appropriate suffix as specified in the general instructions.
(g)	FERC Account Name	Uniform System of Accounts name associated with the service life data reported on this page.

DEFINITIONS OF ITEMS CONTAINED ON SCHEDULE A1—Continued

Schedule reference	Item name	Definition—Description
(h)	Installation Year	The year the property was first placed in service by the reporting carrier.
(i)	Transaction Year	The year of the particular transaction being recorded by this entry; must be equal to or greater than the installation year.
(j)	Corrected Transaction Year.	For corrections of previous entries only. The year of the correction is the transaction year. This field is the year that is being corrected. Appropriate corrections (+ or –) are recorded in the units, ledger value, gross salvage, and cost of removal fields to properly correct the erroneous entry. Transaction Codes must be the same as the entry corrected.
(k)	Transaction Code	The type of transaction being recorded. (See <i>Transaction Codes in the Appendix</i>).
(l)	Number of Units	Number of physical units associated with a transaction.
(m)	Ledger Value	Ledger value of property involved in a transaction.
(n)	Gross Salvage	The actual dollars of salvage recovered upon retirement or disposition of an asset, including insurance proceeds.
(o)	Cost of Removal	Total cost to dispose of property and to restore environment as required.

Specific Instructions

Service Life Data (Simulation) Schedule S1

This schedule is sequenced by Account Number. A new page is started when a change in account occurs and the account name and account number is displayed as the top line in the body of the report.

Data for Simulated Plant Record (SPR) analysis of oil pipeline property accounts 102–186 is reported for each year from the date of initial operation to the present date using the appropriate “Transaction Codes”.

Extreme care should be exercised in assigning Transaction Codes to each transaction in order that the analysis of data will produce meaningful results.

In reporting activity for each account, a Transaction Year, Transaction Code and a Ledger Value must be reported for each transaction activity. A Transaction Year prior to 1940 is not acceptable. For a respondent's initial report, a 1940 Transaction Year, “00” Transaction Code, may be used to report the net balance of property in service as of December 31, 1939. If a respondent commenced operations after 1940, in the initial filing of the Form No. 73, the respondent should report a Transaction Code “00” for the balance of property in service as December 31 of the year preceding the year of commencement of operations. For respondent's initial report with a Transaction

Year later than 1940, the net balance of property in service should be as of December 31 of the preceding year. For a respondent's Update Report, each account will begin with an initial balance, Transaction Code “00”, which should correspond to the ending balance, Transaction Code “99”, reported on the previous filing of the Form No. 73.

Each account *must* have a transaction year with a Transaction Code, “99”, which must equal the balance in the FERC Form No. 6, *Annual Report of Oil Pipeline Companies*.

Negative numbers should not be used in any field. Each Transaction Year must have an applicable transaction installation code or transaction retirement code.

SCHEDULE S1.—SERVICE LIFE DATA

	(a) Pipeline Company Name: xxxxxxxxxxxxxx	(b) Schedule S1 (c) Page xxxx
	(d) From January 1, xxxx to (e) December 31, xxxx	
(f) Account Number: xxxx	(g) Account Name: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	
Transaction Year (h)	Transaction Code (i)	Ledger Value (j)
xxxx	xx	xxxxxxxxxxxxx

DEFINITIONS OF ITEMS CONTAINED ON SCHEDULE S1

Schedule reference	Item name	Definition—description
(a)	Pipeline Company Name	Name of pipeline filing report.
(b)	Schedule ID	Form Number S1
(c)	Page Number	Sequential page numbers as needed.
(d)	Start Date	The beginning year for the service life data reported. The year will be reported, as a four digit number and will be 1940 or later.
(e)	End Date	The ending year for the service life data being reported. The year will be reported as a four digit number.
(f)	FERC Account Number ..	Uniform System of Accounts number associated with the service life data reported on this page with appropriate suffix as specified in the general instructions.
(g)	FERC Account Name	Uniform System of Accounts name associated with the service life data reported on this page.
(h)	Transaction Year	The year of the particular transaction being recorded by this entry; must be equal to or greater than the installation year.
(i)	Transaction Code	The type of transaction being recorded. (See <i>Transaction Codes in the Appendix</i>).
(j)	Ledger Value	Ledger value of property involved in a transaction.

Appendix

DEFINITION—THIS ITEM IDENTIFIES THE ACCEPTABLE TRANSACTION CODES WHICH ARE REPORTED FOR EACH TRANSACTION

Transaction code	Transaction title	Transaction type—Description
00	Initial Balance	Installation—net balance of property in service as of December 31 of the year prior to the start date (See Definition of Items for Schedule S1 or A1).
11	New	Installation—placement of property in service. These codes distinguish the condition of the property when it is added. A vintage year must begin with one of the following codes: 00, 11, 12, 13, 30 or 51.
12	Second Hand.	
13	Reconditioned	
	(See code 65).	
30	Acquisition	Installation—property acquired from another operation carrier to be continued in the same or similar type of service. Acquisitions may occur as the result of mergers, consolidations, pooling of interests, or purchase of another company or portion thereof.
51	Transfer In	Transfer resulting in an increase of investment in an account with a concurrent decrease in another depreciable account with the company or an affiliated company. Opposite of a Transfer Out.
52	Transfer Out	Transfer—the removal of property from a depreciable account and concurrent reassignment of that property to another account in the company or an affiliated company. The reason for a Transfer Out may be a reclassification or a change in operations. No salvage entries are allowed for this code.
61	Regular	Retirement—all retirements which occur in the course of normal operations for any cause other than those listed herein.
62	Reimbursed	Retirement—a retirement of property for which the company is compensated fully at the time of retirement through insurance or by public authority as a result of negotiations.
63	Sale	Retirement—a retirement in which “going concern” property is sold for reuse to another organization for continuation of service. Sales at the end of life or because the property is no longer useful for normal transportation purposes are Regular Retirements (Code 61).
64	Outlier	Retirement—a retirement which reflects a <i>highly improbable occurrence</i> should be classified as an outlier if the situation under which the retirement occurred can be documented as being exceptionally unusual.
65	Reconditioned	Retirement—retirement for the purpose of reconditioning the asset for further transportation service when the reconditioning is performed by the company or an affiliated company. The property is reentered into service coded 13 (Reconditioned).
81	+ Adjustment	Adjustment—adjustment codes should be used only with FERC approval. Entries to correct past errors or omissions are not considered to be adjustments and should be corrected by use of the “Corrected Transaction Year” field.
82	– Adjustment.	
99	Balance	Balance—balance in service as of December 31 of the End Date (See Definitions of Items for Schedule A1 or S1). No salvage entries are permitted for this code.

[FR Doc. 05–11550 Filed 6–13–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY**31 CFR Part 50****RIN 1505–AB09****Terrorism Risk Insurance Program: Additional Claims Issues; Insurer Affiliates****AGENCY:** Departmental Offices, Treasury.**ACTION:** Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule as part of its implementation of title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program ends on December 31, 2005. This final rule clarifies that, for purposes of calculating direct earned premium and insurer

deductibles and meeting the requirements for claiming the Federal share of compensation for insured losses for any Program Year, an insurer's affiliates will be determined based on the insurer's circumstances as of the date of occurrence of the act of terrorism that is the first act of terrorism certified by the Secretary for that Program Year.

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

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

SUPPLEMENTARY INFORMATION:**I. Background**

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism

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

November 26, 2002, and December 31, 2005.

Each entity that meets the definition of “insurer” (well over 2000 firms) must participate in the Program. The amount of the Federal share of compensation for an insured loss resulting from an act of terrorism is to be determined based upon insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act and the implementing regulations. An insurer’s deductible increases each year of the Program, thereby reducing the Federal Government’s share prior to expiration of the Program. An insurer’s deductible is calculated based on a percentage of the value of direct earned premiums collected over certain statutory periods. Once an insurer has met its deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an annual industry-aggregate limit of \$100 billion.

II. Proposed Rule and Overview of Comments

Under the Act and regulations, “affiliates” are treated collectively as one insurer for purposes of calculating the insurer deductible for a Program Year. Treasury issued a proposed rule on insurer affiliations, with a request for comment, on January 18, 2005 (70 FR 2830). The proposed rule would have clarified subpart F of 31 CFR part 50, the claims procedures for insurers seeking the Federal share of compensation for insured losses. The proposed rule added new section 50.55, which provided that for purposes of subpart F, an insurer’s affiliates for any Program Year are to be determined based on the insurer’s circumstances as of the date of the first certified act of terrorism in that Program Year. This clarification was needed because affiliations of insurers may change over the course of a Program Year and there may be more than one certified act of terrorism in a Program Year. After careful consideration of comments on the proposed rule, Treasury is now issuing this final rule.

Treasury received one comment on the proposed rule from an ad hoc industry working group that included members from eight national property-casualty insurance trade associations, collectively representing insurers, reinsurers and producers. The commenter disagreed with the proposed rule, asserting that adoption of the “fixed” affiliate status approach would lead to unintended compliance and administrative consequences for the industry and Treasury in the event of multiple terrorist acts during a Program

Year. The working group recommended that Treasury adopt a regulation that would: “(a) tie Treasury or insurer action (e.g., reporting, claim payment) pursuant to TRIA to an insurer’s affiliate status as of the date of that action; and (b) determine an insurer’s TRIA deductible based on affiliate status as of the date of each certified terrorism event in any given Program Year.”

Treasury appreciates the concerns raised by the commenter and has thoroughly reviewed the material provided. With the potential for changes in insurer affiliations during the year, an annual deductible presents implementation problems no matter how a final rule is constructed. However, the Act defines an insurer deductible on a Program Year basis. As further explained below in response to specific concerns, Treasury believes that, overall, fixing affiliations as of one event in a Program Year presents a more comprehensive solution to all of the potential implementation problems. After reviewing the comment provided, however, Treasury is modifying the proposed rule in certain respects to clarify and improve how the regulation would be applied. Specifically, the final rule provides that an insurer’s affiliates are determined by the circumstances existing on the date of occurrence of the act of terrorism that is the first act of terrorism in a Program Year to be certified by the Secretary for that Program Year. In addition, based on the comment presented, Treasury intends to provide for enough flexibility in its administration of the claims and payment process to accommodate, where possible, particular insurer circumstances.

To assist in explaining its position, the commenter constructed several hypothetical scenarios which served to illustrate the concerns with the proposed rule.

1. The industry working group presented Treasury with an example to illustrate how deductible and Federal share calculations would be applied with its suggested approach to affiliations, *i.e.*, considered as of each certified act. In Treasury’s view, the suggested approach of calculation of the deductible at each event essentially produces an approach that blends a “per event” methodology with a methodology based on insurer affiliations as of the last certified act of terrorism in a Program Year. As more specifically explained in (a)–(d) below, after careful review of the example, Treasury continues to believe that the first certified act of terrorism must be the point in time that establishes insurer affiliations.

(a) The working group’s approach relies on Treasury having to assume how the Federal payments for a first event are distributed within the insurer group in order to determine the appropriate deductible applicable to the new configuration of affiliations as of a second event. Specifically, the example provided assumes that Federal payments are allocated among affiliates in proportion to their share of the total insured losses of their insurer group. This may not be the way payments are actually allocated.

(b) The example presents a simplified scenario where all claims from a first certified act of terrorism have been settled and paid prior to an insurer seeking the Federal share for claims arising from a second certified act. In a real situation it is much more likely that claims from the first event will continue to be submitted even as claims from the second event are presented. Thus, in such a scenario, it is unclear what deductible should be applied for losses arising out of the first event. Treasury anticipates that the administrative burden in processing such a mixture of claims exceeds the reasonable capabilities of the reporting and processing systems.

(c) The working group’s approach shifts deductible amounts based on the direct earned premium for an individual insurer within an insurer group to another insurer group as affiliations change. The suggested methodology for determining the group deductible for the new affiliation at the time of a subsequent certified act of terrorism can lead to duplicative application of deductible amounts within a single Program Year. This is contrary to the Act’s requirement of applying a single calendar year deductible to the insured losses of insurers.

(d) As noted above, the Act requires the application of a single calendar year deductible to the insured losses of each insurer. Since Treasury has no separate contracts with insurers, there is less flexibility in dealing with the allocations and calculations proposed by the commenter than what the commenter suggests. The working group’s approaches to allocating the deductible and to calculating the Federal share seem more appropriate as items subject to negotiation in crafting the terms of a merger or acquisition agreement than a Federal rulemaking.

2. The working group noted that pursuant to the proposed rule, in a Program Year with multiple certified acts of terrorism, even a minimal first event involving insured losses for only one insurer would fix affiliations for the entire industry. The working group also

noted that the order in which events are actually certified as acts of terrorism may be different than the order in which such events occurred. Consequently, the proposed rule could result in claims reporting and Federal payments being made under a set of affiliations that does not match the affiliations that were in place at the time of the first act of terrorism in a Program Year.

Treasury has extensively reviewed both of these concerns. Having concluded that calculating the insurer deductible and processing the Federal share of compensation requires insurer affiliations to be fixed at a single point in a Program Year, Treasury examined how, within that constraint, the commenter's two concerns could be addressed. To address the first concern, *i.e.*, minimal first event fixing affiliations for the entire industry, Treasury reconsidered the alternative discussed in the preamble of the proposed rule of establishing affiliations as of the first event for which an insurer, or any affiliates, actually had insured losses. In reexamining this alternative in conjunction with addressing the second concern, *i.e.*, the order in which acts of terrorism are certified may be different than the order in which the acts occur, it became apparent that crafting a final rule that would address both concerns raised by the working group resulted in an overly complex process for determining affiliations. Treasury has concluded that it is more important to clarify that the first certified act of terrorism will be based on the certification date, not the occurrence date of the underlying act giving rise to certification. This will allow for the expeditious processing of claims for the Federal share without having to depend on a certification being made for a prior terrorist event that may still be under investigation. For the final rule, Treasury has thus clarified the regulation to provide generally that an insurer's affiliations are determined by the circumstances on the date of occurrence of the act that is the first act of terrorism certified by the Secretary for the Program Year. This is illustrated in the following example.

A possible act of terrorism occurs in March for which investigations begin. In the meantime a second terrorist event occurs in September that is readily identifiable as an act of terrorism under the Act and is certified by the Secretary in October. The March event is certified by the Secretary in November. In this case, the first certified act used to determine affiliations for the Program Year would be the September terrorist event. Affiliations would be fixed for the entire Program Year as of the

occurrence date of the act of terrorism in September.

3. The working group stated that the proposed rule would not treat insurers equitably because as affiliations change, the effective deductible for an insurer deviates from the Act's mandated 15 percent for Program Year 3. Treasury disagrees that the proposed or final rule results in inequitable treatment of insurers. The working group's example calculations, based on its hypothetical scenarios, purport to show that the proposed rule results in the insurer deductible deviating from the mandated 15 percent of "direct earned premium" (DEP) for a second act of terrorism. This point is based on the premise that the deductible can vary as of each event based on the affiliations at the time of each event. This is not possible with an annual deductible as mandated by the Act. The commenter's proposal would result in the re-computation of deductibles and payments for losses for the entire Program Year based on affiliations as of the last act of terrorism in the Program Year. The same logic used in the example could then be applied to the prior event to show that now the deductible in that first event deviated from the required 15 percent insurer deductible. Treasury's rule applies the deductible, set at 15 percent of DEP for the affiliated structure at the time of the first terrorism event, consistently throughout the Program Year.

4. The working group asserted that complications would arise from the proposed rule's impact on producers because disclosure requirements may have been met by sending the disclosures through producers. The commenter noted that the proposed rule's "fictional" affiliations could require an agent to assist an insurer in certifying compliance with the Act's notice requirements where the agent no longer has any legal relationship with the insurer. Treasury appreciates the concern raised by producers that they may be called upon to assist an insurer in certifying compliance. The issue that is raised, however, is not related to the Program's proposed treatment of affiliations, but is rooted in the fact that affiliations may change over time, even in the aftermath of a single event or independent of any event. Treasury expects an insurer to be able to certify that disclosures have been made and that records are available for audit, if necessary. Treasury has recognized that insurers may or may not carry out their disclosure responsibilities through producers. Whatever approach is taken is an insurer decision on how to comply with the Act's disclosure requirements.

In any case, Treasury believes the decision to call upon producers to certify or otherwise document insurer compliance with the Program's disclosure requirements is a prerogative of the insurer.

III. Final Rule

The final rule adds new section 50.55 and provides that for the purposes of subpart F (Claims Procedures), an insurer's affiliates for any Program Year shall be determined by the circumstances existing on the date of occurrence of the act of terrorism that is the first act of terrorism in a Program Year to be certified by the Secretary. The final rule also includes a technical change to the definition of "affiliate" in section 50.5(c) to provide a cross-reference to section 50.55.

This final rule provides additional guidance to insurers on how affiliations will be viewed for purposes of calculating the insurer deductible under the Act and otherwise meeting requirements of subpart F. By clarifying insurer rights and obligations that were cited as concerns by the working group, this rulemaking makes available information relevant to insurers evaluating and addressing risks associated with corporate restructuring. Treasury recognizes that claim submissions and Federal payments for insured losses may continue for years following a certified act of terrorism. Consequently, over time, processing difficulties may arise from a change in an insurer's affiliation status whether or not more than one certified act of terrorism occurs in a Program Year. Within the scope of this rule and other constraints on Treasury in administering the claims process, Treasury will strive for ease of operations. This could, for example, involve recognition of alternative reporting structures where there is no impact on insurer deductibles and/or the amount of the Federal share of compensation owed to affected insurers. Treasury may make adjustments in its procedures, promulgate revised rules, or on a case-by-case basis enter into agreements with the involved parties to address administrative difficulties arising from changes in insurer affiliations once insured losses have been incurred.

IV. Procedural Requirements

Executive Order 12866, "Regulatory Planning and Review". This rule is not a significant regulatory action for purposes of Executive Order 12866, "Regulatory Planning and Review," and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is hereby certified that the final rule will not have a significant economic impact on a substantial number of small entities. Treasury is required to pay the Federal share of compensation to insurers for insured losses in accordance with the Act. A condition of Federal payment is that the insurer must submit to Treasury, in accordance with procedures established by Treasury, a claim for payment and certain certifications. The Act itself requires all insurers receiving direct earned premium for any type of property and casualty insurance, as defined in the Act, to participate in the Program. This includes all insurers regardless of size or sophistication. The Act also defines property and casualty insurance to mean commercial lines of insurance without any reference to size or scope of the insurer or the insured. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. The rule merely clarifies the point in time at which insurer affiliations are determined for purposes of the Program. A regulatory flexibility analysis is thus not required.

List of Subjects in 31 CFR Part 50

Terrorism Risk Insurance.

Authority and Issuance

■ For the reasons set forth above, 31 CFR is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

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

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

■ 2. Section 50.5 of subpart A is amended by adding paragraph (c)(6) to read as follows:

§ 50.5 Definitions.

* * * * *

(c) * * *

(6) See § 50.55 of this part for determination of an insurer's affiliates for purposes of subpart F.

* * * * *

■ 3. Subpart F of part 50 is amended by adding § 50.55 to read as follows:

§ 50.55 Determination of Affiliations.

For the purposes of subpart F, an insurer's affiliates for any Program Year shall be determined by the circumstances existing on the date of occurrence of the act of terrorism that is the first act of terrorism in a Program

Year to be certified by the Secretary for that Program Year.

Dated: June 8, 2005.

Gregory Zerzan,

Acting Assistant Secretary of the Treasury.

[FR Doc. 05–11684 Filed 6–13–05; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–034]

RIN 1625–AA09

Drawbridge Operation Regulation; Tchoutacabouffa River, Cedar Lake, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eighth Coast Guard District, has temporarily changed the regulation governing the operation of the Cedar Lake Road Swing Span drawbridge across the Tchoutacabouffa River, mile 8.0, at Cedar Lake, Harrison County, Mississippi. The rule states that the draw of the bridge shall open on signal with twenty-four hours notice; except that the draw will remain closed to navigation Monday through Friday from June 27 through October 28, 2005 with the exception of July 4, 2005. However, from August 1 through September 23, 2005 it will open on signal with twenty-four hours notice every other weekend, beginning with the weekend of August 13, 2005. The closure is necessary for remedial structural repairs to be made to the bridge that are essential for the continued operation of the draw span.

DATES: This temporary rule is effective from 7 a.m. on June 27, 2005 to 6 p.m. on October 28, 2005.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 500 Poydras Street, New Orleans, Louisiana 70130–3310, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The City of Biloxi has recently become responsible for maintenance of this bridge and upon initial inspection, discovered that remedial structural repairs must be done expediently to prevent the waterway from being obstructed. As a result, publishing an NPRM would be contrary to the public interest.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The required repairs must be done expediently because there is a substantial risk that emergency breakdowns will occur, causing the waterway to be obstructed for lengthy periods of time.

Background and Purpose

The City of Biloxi has requested a temporary rule changing the operation of the bascule span drawbridge across the Tchoutacabouffa River, mile 8.0 at Cedar Lake, Harrison County, Mississippi. Recently, maintenance responsibility for the bridge was transferred from Harrison County to the City of Biloxi. City bridge engineers conducted an inspection of the bridge and found that the swing span of the bridge had numerous badly deteriorated steel structural members. In order to maintain the operation of the swing span in a safe, efficient manner, expedient remedial repair is needed. The contractor for the City of Biloxi plans to remove and replace existing structural members from June 27 through August 1, 2005. This will require closures of five days at a time. During the period between August 1 and September 23, 2005, the bridge will need to be closed to navigation to facilitate replacing steel members and adding additional steel members then balancing the swing span. During the period between September 23 and October 28, 2005, the contractor will sand blast and paint the entire structure. This rule allows the draw of the bridge to remain closed to navigation continuously, Monday through Friday from June 27 through October 28, 2005. It will open on signal with twenty-four hours notice every weekend during this period, except from August 1, 2005

through September 23, 2005 when it will open on signal with twenty-four hours notice every other weekend beginning with the weekend of August 13, 2005.

The bridge has a vertical clearance of 5 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Bridge tender logs show that the bridge opens to pass navigation approximately four times per month during the summer and fall. The majority of vessels that require an opening of the draw are recreational vessels. Bridge tender logs show that during the period between June 27, 2004 and October 28, 2004, the bridge was opened only four times for commercial fishing vessels and none for tugs with tows. The City of Biloxi has contacted the primary waterway users of the waterway, including commercial users, and advised them of the planned closures. The City of Biloxi has indicated to the Coast Guard that the waterway users will be able to schedule their operations when the bridge will be able to open to pass marine traffic.

Presently, title 33, Code of Federal Regulations (CFR), part 117.685 states: The draw of the Cedar Lake Road Bridge over the Tchoutacabouffa River, mile 8.0, shall open on signal if at least twenty-four hours notice is given.

Regulatory Evaluation

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

There is not expected to be a significant impact due to the infrequency of vessel transits through the bridge. The City of Biloxi has contacted the users of the waterway who have indicated that they will be able to schedule their transits during the periods when the bridge will open to pass marine traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the Cedar Lake Road Bridge across the Tchoutacabouffa River during the closure. As stated above, there is not expected to be a significant impact due to the infrequency of vessel transits through the bridge. The City of Biloxi has contacted the users of the waterway who have indicated that they will be able to schedule their transits during the periods when the bridge will open to pass marine traffic.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. From June 27, 2005 to October 28, 2005, § 117.685 is suspended and a new § 117.T684 is added to read as follows:

§ 117.T684 Tchoutacabouffa River.

The draw of the Cedar Lake Road swing span bridge, Tchoutacabouffa River, mile 8.0, will open on signal with twenty-four hours notice; except that the draw will remain closed to

navigation Monday through Friday with the exception of July 4, 2005. However, from August 1, 2005 through September 23, 2005 it will open on signal with twenty-four hours notice every other weekend beginning with the weekend of August 13, 2005.

Dated: June 3, 2005.

R.F. Duncan,

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

[FR Doc. 05–11673 Filed 6–13–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–019]

RIN 1625–AA00

Safety Zone; Rochester Harbor Boat Parade, Rochester, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of Rochester Harbor and the Genesee River. This safety zone is intended to restrict vessel traffic from a portion of Rochester Harbor and the Genesee River, Rochester, New York during a boat parade. This safety zone is necessary to ensure the safety of spectators.

DATES: This rule is effective from 9 p.m. on June 24, 2005 through 10 p.m. on June 24, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket (CGD09–05–019), and are available for inspection or copying at U.S. Coast Guard Marine Safety Office (MSO) Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 7 a.m. and 3 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Craig A. Wyatt, U.S. Coast Guard Marine Safety Office Buffalo, at (716) 843–9570.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM. Under 5

U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the boat parade.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with boat parades. Based on recent accidents that have occurred in other Captain of the Port zones, the Captain of the Port Buffalo has determined that boat parades in close proximity to other watercraft pose significant risks to public safety and property. The combination of large numbers of inexperienced recreational boaters, congested waterways and alcohol use, could easily result in serious injury or fatalities.

Discussion of Rule

The Coast Guard is establishing a safety zone consisting of all navigable waters of Rochester Harbor and the Genesee River, Rochester, New York. The Coast Guard will notify the public in advance, by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from Marine Safety Office Buffalo, by facsimile (fax).

Regulatory Evaluation

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

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

This determination is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact to mariners from the zones’ activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a

substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 9 p.m. until 10 p.m. on the day of the event and vessel traffic can safely pass outside the safety zone during the event. In cases where traffic congestion is greater than expected and/or blocks shipping channels, traffic may be allowed to pass through the safety zone under a Coast Guard or assisting agency escort with the permission of the Captain of the Port Buffalo. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (see **ADDRESSES**).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132,

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant

energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f) and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction from further environmental documentation. Paragraph (34)(g) is applicable to this event because the intent of this rule is to establish a safety zone.

A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–019 is added to read as follows:

§ 165.T09–019 Safety Zone; Rochester Harbor Boat Parade, Rochester, NY.

(a) *Location.* The following area is a temporary safety zone: all waters of Rochester Harbor and the Genesee River encompassed by an area 800-yards around the West Jetty pier in approximate position: 43° 15'40" N, 077° 36'05" W.

These coordinates are based upon NAD 83.

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective time and date.* This section is effective from 9 p.m. (local) on June 24, 2005 through 10 p.m. (local) on June 24, 2005.

Dated: May 23, 2005.

P.M. Gugg,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 05–11674 Filed 6–13–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD1–05–036]

RIN 1625–AA00

Safety Zone: Boston Fourth of July Fireworks—Charles River, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Boston Fourth of July Fireworks.

The safety zone is necessary to protect the life and property of the maritime public from the potential hazards posed by a fireworks display. The safety zone will temporarily prohibit entry into or movement within this portion of the Charles River during its effective period.

DATES: This rule is effective from 7 p.m. e.d.t. on July 4, 2005 until 11:30 p.m. e.d.t. on July 4, 2005, with a rain date of July 5, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–05–036 and are available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Paul English, Sector Boston, Waterways Management Division, at (617) 223–5750.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. An NPRM was not published for this regulation because the final details regarding the nature of the zone were not determined with sufficient time to draft and publish an NPRM. Any delay encountered in the regulation's effective date would be contrary to public interest since the safety zone is needed to prevent traffic from transiting a portion of the Charles River, Boston, Massachusetts, during the fireworks display and to provide for the safety of life on navigable waters. Under 5 U.S.C. 553 (d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The zone should have minimal negative impact on vessel use of the Charles River because vessels will only be excluded from the area of the safety zone for 4.5 hours and will be able to operate in other areas of the river during this time.

Background and Purpose

Boston's Fourth of July is holding a fireworks display as part of Boston's celebration in honor of Independence Day. This regulation establishes a temporary safety zone on the waters of the Charles River within a four hundred (400) yard radius around the fireworks launch site located midway between the

Longfellow and Massachusetts Avenue Bridges, specifically at 42°21.28' N, 071°05.00' W.

This safety zone is necessary to protect the life and property of the maritime public from the dangers posed by this event. It will protect the public by prohibiting entry into or movement within this portion of the Charles River during the fireworks display.

Discussion of Rule

The safety zone is in effect from 7 p.m. EDT until 11:30 p.m. EDT July 4, 2005 with a rain date of July 5, 2005. Marine traffic may transit safely outside of the safety zone during the event thereby allowing navigation of the entire river except for the portion delineated by this rule.

Due to the size of the river and the size of this safety zone, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local media, local notice to mariners and marine information broadcasts.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under of the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents vessel traffic from transiting into a portion of the Charles River during this event, the effect of this regulation will not be significant for several reasons: vessels will only be excluded from the area of the safety zone for 4.5 hours; although vessels will not be able to transit the river in the vicinity of the zone, they will be able to operate in other areas of the river during the effective period; and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would

have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Charles River from 7 p.m. EDT until 11:30 p.m. EDT July 4, 2005 with a rain date of July 5, 2005. This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons described under the Regulatory Evaluation section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it would establish a safety zone. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be available in the docket where indicated under

ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary section 165.T05-036 to read as follows:

§ 165.T05-036 Safety Zone: Boston 4th of July Fireworks, Charles River, Boston, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Charles River within a 400 yard radius of the fireworks launch site located midway between the Longfellow Bridge and the Massachusetts Avenue Bridge, Boston, MA, specifically at 42° 21.28' N, 071° 05.00' W.

(b) *Effective Date.* This section is effective from 7 p.m. e.d.t. until 11:30 p.m. e.d.t. on July 4, 2005, with a rain date of July 5, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: June 2, 2005.

James L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 05-11672 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 137-0089; FRL-7912-4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on March 18, 2005 and concerns volatile organic compound (VOC) emissions from the fiberboard saturation process at W.R. Meadows, Inc., Goodyear, AZ. We are approving a local permit condition that regulates this source-specific emission unit under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on July 14, 2005.

ADDRESSES: You can inspect a copy of the submitted SIP revision, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see a copy of the submitted SIP revision by appointment at the following locations:

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

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

Maricopa County Environmental Services Department, 1001 North Central Avenue, Suite 695, Phoenix, AZ 85004.

A copy of the rule may also be available via the Internet at <http://www.maricopa.gov/envsvc/air/ruledesc.asp>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947-4118, petersen.alfred@epa.gov.

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

I. Proposed Action

On March 18, 2005 (70 FR 13125), EPA proposed to approve a draft version of the following permit condition into the Arizona SIP.

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Revised	Submitted
MCESD	Permit V98-004, Condition 23.	<i>RACT Requirements for the Fiberboard Saturation Process, W.R. Meadows of Arizona, Inc., Goodyear, AZ.</i>	02/17/05	04/20/05

On April 26, 2005, the submittal of the permit condition in Table 1 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. The submitted version is substantively identical to the draft version proposed for EPA approval. We proposed to approve this permit condition because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this

period, we did not receive any comments.

III. EPA Action

No comments were submitted to change our assessment that the submitted permit condition complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the CAA, EPA is fully approving the permit condition into the Arizona SIP.

IV. Statutory and Executive Order Reviews

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

subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 27, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(121) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(121) A plan revision was submitted on April 20, 2005 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(1) Permit V98-004, condition 23, W.R. Meadows of Arizona, Inc., Goodyear, AZ, adopted on February 17, 2005.

* * * * *

[FR Doc. 05-11160 Filed 6-13-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RO4-OAR-2005-GA-0002; RO4-OAR-2005-GA-0003; R04-OAR-2004-GA-0003-200517; FRL-7924-2-]

Approval and Promulgation of Implementation Plans; Georgia, Determination of Attainment for Atlanta 1-Hour Severe Ozone Nonattainment Area and Severe Area Vehicle Miles Traveled

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Atlanta area has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2002 through 2004 ozone seasons. Based on this determination, EPA is also determining that certain attainment demonstration and reasonable further progress requirements, along with other related requirements of part D of title I of the Clean Air Act (CAA or Act), are not applicable to the Atlanta area for so long as the area continues to attain the 1-hour ozone standard. The current Atlanta 1-hour severe ozone nonattainment area consists of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding and Rockdale (Atlanta area).

Additionally, EPA is granting final approval to Georgia's Severe Area Vehicle Miles Traveled (VMT) State Implementation Plan (SIP) submittal.

DATES: *Effective Date:* This rule is effective June 14, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. RO4-OAR-2005-GA-0002; RO4-OAR-2005-GA-0003; R04-OAR-2004-GA-0003. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. 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 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia, 30303-8960. The telephone number is (404) 562-9036. Mr. Martin can also be reached via electronic mail at martin.scott@epa.gov.

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

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- II. What Actions Are We Taking and When Are They Effective?
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I. What Is the Background for This Action?

On June 30, 2004, the Georgia Environmental Protection Division (EPD) submitted a SIP revision addressing the Severe Area VMT requirement (section 182(d)(1)(A) of the Act) for the Atlanta 1-hour ozone nonattainment area. Section 182(d)(1)(A) requires severe ozone nonattainment areas to submit a SIP revision that identifies whether it is necessary to adopt transportation control measures (TCMs) to offset growth in emissions attributable to growth in VMT. On April 12, 2005, (70 FR 19031), EPA published a proposed rule proposing to approve Georgia's VMT SIP submittal because the State had demonstrated that emissions increases from increases in VMT, or the numbers of vehicle trips, within the Atlanta area did not rise above an established ceiling by 2004, the year the area attained the 1-hour ozone NAAQS. Please see the proposed rule for a detailed discussion of the VMT submittal and of EPA's rationale for its proposed approval.

In addition, on February 1, 2005, EPD submitted a request to redesignate the 1-hour ozone NAAQS nonattainment area

of Atlanta, Georgia, to attainment, and a request for EPA approval of a Georgia SIP revision containing a 10-year maintenance plan for the 13-county Atlanta area. The 10-year maintenance plan includes new motor vehicle emissions budgets (MVEB) for the year 2015. Georgia EPD also requested that EPA make a determination that certain SIP submittal requirements related to attainment demonstrations, contingency measures, and reasonable further progress are not applicable requirements because the Atlanta area has attained the 1-hour ozone NAAQS based on ambient air monitoring data for the 3-year period including the years 2002, 2003, and 2004.

On April 20, 2005, (70 FR 20495), EPA published a proposed rule proposing four actions: To find that the Atlanta area has attained the 1-hour ozone NAAQS; to find that certain attainment demonstration and reasonable further progress requirements, along with other related requirements of part D of title I of the CAA, are not applicable to the Atlanta area for so long as it continues to attain the 1-hour ozone standard; to approve the 10-year maintenance plan, including the 2015 MVEBs; and to approve the 1-hour ozone redesignation request for the Atlanta area. Please see the proposed rule for a detailed discussion of EPD's submittals and of EPA's rationale for its proposed actions.

II. What Actions Are We Taking and When Are They Effective?

Today, EPA is granting final approval of two of the four actions proposed by EPA on April 20, 2005, (70 FR 20495), and granting final approval of EPD's VMT submittal which was proposed by EPA on April 12, 2005, (70 FR 19031). First, EPA is determining that the Atlanta area has attained the 1-hour ozone NAAQS based on air quality monitoring data for the 2002 through 2004 ozone season. Based on this determination, EPA is also determining that certain CAA SIP submittal requirements related to attainment demonstrations and reasonable further progress, along with other related requirements of part D of title I of the CAA, are not currently applicable to the Atlanta area because the area is attaining the 1-hour ozone standard. If an area has in fact attained the 1-hour ozone standard, the stated purpose of CAA SIP submissions relating to attainment demonstrations and reasonable further progress (*i.e.* to ensure timely attainment of the 1-hour ozone standard) has already been fulfilled and there is no need for an area to make further submissions containing

additional measures to achieve attainment, so long as the area remains in attainment. See Memorandum from John S. Seitz, Office of Air Quality Planning and Standards, entitled, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995 (Seitz Memorandum).

Second, EPA is granting final approval to Georgia's Severe Area VMT SIP submittal which satisfies the requirements of section 182(d)(1)(A) of the Act.

In this rulemaking, EPA is not taking action on its April 20, 2005, proposed approval of the redesignation request and 10-year maintenance plan for the Atlanta area. Final action on the redesignation request and 10-year maintenance plan will be taken in a separate rulemaking.

A. Determination of Attainment and Nonapplicable Requirements

EPA interprets the CAA's general nonattainment provisions of subpart 1 of part D of title I (sections 171 and 172) and the more specific attainment demonstration and related provisions of subpart 2 (section 182), relating to SIP requirements for ozone nonattainment areas to not require the submission of SIP revisions concerning reasonable further progress (RFP), attainment demonstrations, or contingency measures for areas where the monitoring data show that the area is attaining the 1-hour ozone standard. See *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996). The rationale behind this interpretation is discussed in the Seitz Memorandum.

EPA believes it is reasonable to interpret the provisions regarding RFP and attainment demonstrations, along with other certain related provisions, not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA believes this interpretation is reasonable because the stated purpose of CAA provisions addressing or relating to RFP and attainment demonstrations is to ensure attainment of the standard by the applicable attainment date. If an area has in fact attained the standard, the stated purpose of the requirement will have been fulfilled and there will be no need for an area to make a further submission containing additional measures to achieve attainment. EPA has explained at length in other actions

its rationale for the reasonableness of this interpretation of the CAA and incorporates those explanations by reference. See (68 FR 25418) (St. Louis, MO., May 12, 2003); (68 FR 4847, 4848) (St. Louis, MO., January 30, 2003); (66 FR 27483, 27486) (Louisville, Kentucky, May 17, 2001); (67 FR 49600) (Cincinnati-Hamilton, Kentucky, July 31, 2002); (66 FR 53095) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio and Kentucky, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio, May 7, 1996); (60 FR 36723) (Salt Lake and Davis Counties, Utah, July 18, 1995); (60 FR 37366) (July 20, 1995); (61 FR 31832–31833) (June 21, 1996) (Grand Rapids, MI). The United States Court of Appeals for the Tenth Circuit has upheld EPA's interpretation. See *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); see also *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004) (rejecting a challenge to the interpretation).

EPA has reviewed the ambient air monitoring data for 1-hour ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in EPA's Aerometric Information Retrieval System (AIRS)) for the Atlanta ozone nonattainment area from the 2002 through 2004 ozone seasons. On the basis of this review, EPA is making its final determination that the area has attained the 1-hour ozone standard during the 2002 through 2004 period and continues to attain the standard. On the basis of this final determination of 1-hour ozone attainment, the State of Georgia is not required to make the following submittals for the Atlanta area: section 172(c)(2) reasonable further progress requirements, section 172(c)(9) and section 182(c)(9) contingency measures, sections 182(b)(1)(A) and 182(c)(2)(B) reasonable further progress requirements, sections 172(c)(1), 182(c)(2)(A), and section 182(j) attainment demonstration and reasonably available control measures requirements, section 182(c)(5) demonstrations, and section 182(g) milestones. See 70 FR 20500–20501 (April 20, 2005). The Atlanta area does not need any other measures to attain the 1-hour ozone standard, so long as the area continues to monitor attainment of the 1-hour standard. When and if a violation occurs, the requirements referenced above would need to be addressed.

The State of Georgia must continue to operate an appropriate network, in accordance with 40 CFR part 58, to verify the attainment status of the Atlanta area. The air quality data relied

upon to determine that the area is attaining the 1-hour ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's AIRS.

B. Severe Area Vehicle Miles Traveled

On April 12, 2005, (70 FR 19031), EPA published a proposed rule proposing to find that Georgia's Severe Area VMT SIP revision had addressed the requirement of section 182(d)(1)(A) of the Act that severe ozone nonattainment areas submit a SIP revision that identifies whether it is necessary to adopt TCMs to offset growth in emissions attributable to growth in VMT. EPA's longstanding policy is that the purpose of the VMT SIP requirement is to prevent a growth in motor vehicle emissions from canceling out the emissions reduction benefits of the federally mandated programs of the CAA. See 60 FR 48,896, 48,897 (Sept. 21, 1995) (EPA final approval of Illinois' VMT SIP). EPA interprets this provision to require that sufficient measures be adopted so that projected motor vehicle volatile organic compound (VOC) emissions will never be higher during the ozone season in one year than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline, and is above and beyond the separate requirements for the RFP and the attainment demonstrations. The ceiling line is defined, therefore, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the CAA. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of federal measures such as new motor vehicle standards, phase II Reid vapor pressure (RVP) controls, and reformulated gasoline, as well as the CAA-mandated SIP requirements.

For each year from 1999 to 2004, typical summer day highway mobile source emissions inventories were estimated for the Atlanta 13-county 1-hour ozone nonattainment area. These inventories, which reflect the most recent planning assumptions available and include all federal and State mobile source control rules, demonstrate that

motor vehicle emissions of both VOC and nitrogen oxide (NO_x) decreased each year, for a six-year period, through the 2004 attainment year for the Atlanta severe 1-hour ozone nonattainment area. Therefore, pursuant to the Act and EPA policy, the adoption of additional TCMs is not required for Atlanta to demonstrate attainment of the 1-hour NAAQS standard for ozone or to satisfy the requirements of section 182(d)(1)(A). EPA is granting final approval to Georgia's Severe Area VMT SIP revision in this action.

C. Effective Date of This Action

EPA finds that there is good cause for the determination of attainment and the determination of non-applicability of certain CAA SIP submittal requirements to become effective June 14, 2005, because a delayed effective date is unnecessary due to the nature of the determinations, which relieve the Atlanta area from certain CAA requirements that would otherwise apply to it for so long as the area remains in attainment of the 1-hour ozone standard. The expedited effective date for these actions is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

As indicated above, EPA's September 26, 2003, final rule reclassified the Atlanta area to a "severe" nonattainment area and established a schedule for submission of SIP revisions fulfilling the requirements for severe ozone nonattainment areas. Upon the effective date of this rule, the State of Georgia will be relieved of the obligation to develop and submit several of these SIP revisions, which are specifically identified above, for so long as the area remains in attainment of the 1-hour ozone standard. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, Georgia's relief from these SIP submittal obligations provides good cause to make this rule effective June 14, 2005, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties such as the

State of Georgia do not need time to adjust and prepare before the rule takes effect.

For these same reasons, EPA also finds that there is good cause for the final approval of Georgia's Severe Area VMT SIP to become effective June 14, 2005. The final approval relieves Georgia from adopting additional TCMs to offset growth in emissions attributable to growth in VMT. This relief is sufficient reason to allow an expedited effective date of this rulemaking under 5 U.S.C. 553(d)(1) and 553(d)(3).

III. What Comments Did We Receive and What Are Our Responses?

Severe Area Vehicles Miles Traveled

On April 12, 2005, (70 FR 19031), EPA published a proposed approval of Georgia's submittal regarding severe area VMT for the Atlanta 1-hour severe ozone nonattainment area. The comment period ended on May 12, 2005. EPA received no adverse comment.

Proposed Redesignation of the Atlanta 1-Hour Severe Nonattainment Area to Attainment for Ozone

On April 20, 2005, (70 FR 20495), EPA published a proposed rule proposing four actions: To find that the Atlanta area has attained the 1-hour ozone NAAQS; to find that certain attainment demonstration and reasonable further progress requirements, along with other related requirements of part D of title I of the CAA, are not applicable to the Atlanta area for so long as it continues to attain the 1-hour ozone standard; to approve the 10-year maintenance plan; and to approve the 1-hour ozone redesignation request for the Atlanta area. The comment period ended on May 20, 2005. One comment, discussed below, was received regarding the maintenance plan portion of EPA's April 20, 2005, proposed rule. The comment, however, contained a footnote addressing emissions increases and a monitoring violation of the 1-hour ozone standard. While EPA does not believe that the footnote was directly submitted as a comment on the attainment determination, we are providing the following clarification on this footnote in this rulemaking.

The Renewable Fuels Association submitted comments with respect to the showing of maintenance which will be addressed by EPA in a separate rulemaking action on the redesignation request and maintenance plan. The comments included a footnote (footnote 3) asserting that "Georgia submitted

data related to only 11 monitors in ten of the thirteen counties. In 2002, however, there was a twelfth monitor located within the 13-county area—Waleska in Cherokee County * * * The monitoring data show that the ozone levels at this monitor were steadily increasing from 2000 to 2002, resulting in a violation in 2002."

In response, EPA notes that there was a special purpose monitor (SPM) in Cherokee County, Georgia, (Waleska site) that operated from 1999–2002.¹ This monitor recorded only one exceedance of the 1-hour ozone standard during this period that occurred in 2002. This one exceedance does not constitute a violation of the 1-hour ozone standard.² The monitor at the Waleska site was terminated by the State due to siting issues (potential interference by trees and a school's chemistry laboratory). The Waleska site was designated a SPM, and for this type of monitor the states are not required to obtain EPA concurrence for its termination.

Georgia's request for redesignation and a determination of attainment did include data from all ozone monitors in the Atlanta area with complete data for the period of 2002–2004, showing no violations of the 1-hour ozone standard. Thus, there were no recorded violations of the 1-hour ozone standard omitted from Georgia's redesignation request as implied by the commentator.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule

¹ A special purpose monitor is a generic term used for all monitors other than State and Local Air Monitoring Stations (SLAMS), National Air Monitoring Stations (NAMS), Photochemical Assessment Monitoring Stations (PAMS), and Prevention of Significant Deterioration (PSD) monitors included in an agency's monitoring network for monitors used in a special study whose data area officially reported to EPA.

² A violation of this standard occurs when the daily maximum 1-hour average concentration measured by a continuous ambient air monitor exceeds 0.12 parts per million more than once per year, averaged over three consecutive years.

will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to June 14, 2005. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 7, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

■ 2. Section 52.570(e) is amended by adding a new entry in numerical order for "20. Severe Area Vehicle Miles Traveled (VMT SIP) for the Atlanta 1-hour severe ozone nonattainment area." to read as follows:

§ 52.570 Identification of Plan.

* * * * *

(e) EPA Approved Georgia Nonregulatory Provisions.

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
20. Severe Area Vehicle Miles Traveled (VMT SIP) for the Atlanta 1-hour severe ozone nonattainment area.	Atlanta 1-hour ozone severe non-attainment area.	June 30, 2004	June 14, 2005. [Insert first page number of publication].

[FR Doc. 05–11719 Filed 6–13–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ131–0088; FRL–7901–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona; Redesignation of Phoenix to Attainment for the 1-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the Arizona Department of Environmental Quality's submittals of revisions to the Arizona state implementation plan that include substitution of the clean fuel fleet program requirement with the cleaner burning gasoline program, adoption of the 1-hour serious area ozone plan and adoption of the 1-hour ozone maintenance plan for the Phoenix metropolitan 1-hour ozone nonattainment area. We are also approving Arizona's request to redesignate the Phoenix metropolitan 1-

hour ozone nonattainment area from nonattainment to attainment. EPA is taking these actions pursuant to those provisions of the Clean Air Act that obligate the agency to take action on submittals of revisions to state implementation plans and requests for redesignation.

DATES: *Effective Date:* This rule is effective on June 14, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at EPA Region 9's Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901. Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you.

Electronic Availability

This document and our proposed rule which was published in the **Federal Register** on March 21, 2005 are also available as electronic files on EPA's Region 9 Web Page at <http://www.epa.gov/region09/air/phoenixoz/index.html>.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (520) 622–1622, e-mail:

tax.wienke@epa.gov, or refer to <http://www.epa.gov/region09/air/phoenixoz/index.html>.

SUPPLEMENTARY INFORMATION:

Throughout this document, the terms "we," "us," and "our" mean U.S. EPA.

Table of Contents

- I. Background
- II. Response to Comments
- III. EPA's Final Action
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I. Background

On March 21, 2005 (70 FR 13425), we published a notice of proposed rulemaking for the State of Arizona. The notice proposed approval of the State's submittals of revisions to the Arizona state implementation plan (SIP) for the Phoenix metropolitan 1-hour ozone nonattainment area and the State's redesignation request for this area from "nonattainment" to "attainment".

Specifically, we proposed approval of three sets of SIP revisions adopted and submitted to us by the Arizona Department of Environmental Quality (ADEQ). First, under sections 182(c)(4)(B) and 110(k)(3) of the Clean Air Act (CAA or "the Act"), we proposed to approve the State of Arizona's 1998 request to "opt-out" of the clean fuel fleet (CFF) program and to approve the cleaner burning gasoline

(CBG) program as a substitute measure. Second, we proposed to approve, under section 110(k)(3) of the Act, the State's 2000 submittal of the *Final Serious Area Ozone State Implementation Plan for Maricopa County* ("Serious Area Ozone Plan"), which provides a demonstration of compliance with the requirements under the CAA for the Phoenix metropolitan "serious" 1-hour ozone nonattainment area. Third, we proposed to approve, under sections 107(d)(3)(D) and 110(k)(3), the State's 2004 submittal of the *One-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area* ("Redesignation Request and Maintenance Plan"), which was developed and adopted locally by the Maricopa Association of Governments (MAG), as meeting CAA requirements for redesignation requests and maintenance plans.

Our proposed approval of these three sets of SIP revisions provided us the basis upon which to propose a finding that the Phoenix metropolitan nonattainment area has fully met the requirements for redesignation found at section 107(d)(3)(E) of the CAA for redesignation of an area from nonattainment to attainment for the 1-hour ozone national ambient air quality standard (NAAQS).¹

We have previously approved the principal control measures relied on in the Serious Area Ozone Plan and the Redesignation Request and Maintenance Plan for attainment and maintenance of the 1-hour ozone NAAQS in the Phoenix metropolitan nonattainment area, including various Maricopa County Volatile Organic Compound (VOC) Reasonable Available Control Technology (RACT) rules (see Table 3 in our proposed rule and footnote 1 in this notice), stage II vapor recovery

requirements (see 59 FR 54521, November 1, 1994), the area's enhanced inspection and maintenance program (see 68 FR 2912, January 22, 2003), and cleaner burning gasoline program (see 69 FR 10161, March 4, 2004).

In addition, under section 107(d)(3)(A) of the Act, we proposed a revision of the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area to exclude the Gila River Indian Reservation. Upon reconsideration, we have decided to withdraw the March 21, 2005 proposal as it relates to the revision of the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area and will instead address this issue in a separate rulemaking. We are withdrawing the boundary change part of the proposal because, as a result of certain errors made at the time of initial designation, we have decided to consider the boundary change pursuant to the error correction provisions of CAA section 110(k)(6), rather than pursuant to CAA section 107(d)(3)(A) as we had proposed.

A more complete description of Arizona's SIP revisions and redesignation request and the rationale for our related approvals was presented in our March 21, 2005 proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

II. Response to Comments

EPA received one comment letter during the 30-day comment period. This letter, dated April 20, 2005, was submitted by the Arizona Center for Law in the Public Interest (ACLPI) on behalf of a private citizen and the Grand Canyon Chapter of the Sierra Club. The comments and EPA responses are as follows:

Comment 1

While we do not dispute that the Phoenix area has not officially violated the 1-hour ozone standard for the past six years, and has not had an exceedance since 1996, we note that several of the monitoring sites continue to record some very high values. Over the past two summers, for example, Maricopa County issued a significant number of ozone alerts. Thus, while the Valley has officially "attained" the one-hour standard, it has not attained the 8-hour standard and ozone continues to be a serious problem that requires vigilant attention.

Response 1

EPA agrees that, while the Phoenix area has attained the 1-hour ozone standard, the Phoenix area continues to

be designated "nonattainment" for the 8-hour ozone NAAQS, which is more stringent than the 1-hour ozone NAAQS. See 69 FR 23858, at 23860, 23878–23879 (April 30, 2004). The 8-hour ozone NAAQS is not relevant to redesignation for the 1-hour standard, and this redesignation will not affect the continued nonattainment designation with respect to the 8-hour standard. The State of Arizona will be obligated to submit further SIP revisions for the purpose of attaining and maintaining the 8-hour ozone NAAQS within the Phoenix-Mesa 8-hour ozone nonattainment area, notwithstanding this redesignation for the 1-hour standard. We intend to identify the specific additional planning and control requirements for 8-hour ozone nonattainment areas in our upcoming Phase 2 implementation rule. The action we are taking today relates only to the 1-hour standard and does not affect the area's designation for the 8-hour ozone standard nor the obligations that will flow from that designation.

Comment 2

In the past, we have expressed concern about the adequacy of the Phoenix area ozone monitoring network. (See Letter dated June 19, 2000 from Jennifer Anderson to Frances Wicher re determination of attainment of the one-hour standard). Thus, we were interested to learn in the proposed rule that changes had been made to the network. In the proposed rule, EPA refers to the description of the monitoring network in the Redesignation Request and Maintenance Plan, but then notes that in recent years, the network has changed and that the current monitoring network is comprised of fewer and different sites that presumably meet EPA regulations. (70 FR 13428). We were unable to locate anything in the rulemaking materials that described which monitor sites were discontinued or which sites were relocated. We are informed only that the number of sites has been reduced from 21 to 18 and that locations have changed. *Id.*

This is of particular concern for a couple of reasons. First, as noted in the proposed rule, one of the control measures implemented by the State as part of the Redesignation Request and Maintenance Plan is the expansion of the nonattainment area. Common sense suggests that an expansion of the nonattainment area should lead to an increase in the number of monitors, not a decrease. Second, as EPA is well aware, the Phoenix metropolitan area continues to experience significant growth, both in population and

¹ In our proposed rule, we also noted that we would not take final action on the redesignation request until certain other separate rulemakings needed for redesignation were finalized. These included a direct final rule approving Maricopa County's emissions statement rule and a negative declaration (related to the RACT requirement) for fiberglass boat manufacturing (70 FR 7038, Feb. 10, 2005), a proposed rule approving local permit conditions for W.R. Meadows, Inc. as meeting the RACT requirement (70 FR 13125, March 18, 2005), and a proposed rule approving Maricopa County Rule 358 as meeting the RACT requirement for polystyrene foam molding operations (70 FR 14616, March 23, 2005). EPA received no adverse comments on the direct final rule and thus our approval of Maricopa County's emissions statement rule and a negative declaration for fiberglass boat manufacturing is now in effect. The Regional Administrator signed the final rule approving the source-specific RACT requirements at W.R. Meadows, Inc. on April 27, 2005 and signed the final rule approving Maricopa County Rule 358 on May 5, 2005. Thus, the three separate rulemakings that were referred to in our March 21, 2005 proposed rule have now been finalized.

footprint. In particular, there are huge residential developments planning for the West Valley in the Buckeye area. These developments, some of which represent the largest master-planned communities in the country, will convert thousands of acres of vacant desert to commercial and residential development, resulting in a significant increase in the mobile source emissions in that area. Consequently, having sufficient sites that will adequately monitor the ozone in this area is critical. However, the information provided in the proposed rule is insufficient to allow us to evaluate the adequacy of the system with respect to this concern. We do not believe it is appropriate for EPA to approve the Redesignation Request and Maintenance Plan if it does not accurately describe the current monitoring network.

Response 2

The commenter incorrectly states that expansion of the nonattainment area is one of the control measures implemented by the State as part of the Redesignation Request and Maintenance Plan. We want to clarify that the State does not intend to expand the 1-hour ozone nonattainment area itself but rather to extend the applicability of certain control measures beyond the boundaries of the 1-hour ozone nonattainment area to areas designated as "unclassifiable/attainment." These expanded control measures will provide additional support for continued maintenance of the 1-hour ozone NAAQS in the Phoenix metropolitan area.

With respect to monitoring networks in general, we note that there are on-going considerations that affect the design of any network (*i.e.*, number, capabilities and locations of stations that comprise the network) in any given year, and thus, a net decrease in the overall number of monitoring stations does not in itself call into question the utility or reliability of the monitoring network or the data it generates. These considerations include, among others, the existence of redundant monitors, the persistent measurement of low concentrations at a given site, and lost access to site locations. These are practical issues that are considered annually by air monitoring agencies as they conduct the Annual Monitoring Network Reviews required by EPA regulations at 40 CFR 58.20 and 58.25. Maricopa County has published its last four monitoring network reviews (2001 to 2004) on the Web at <http://www.maricopa.gov/aq/AIRDAY/airmon.asp>. The monitoring network reviews explain anticipated changes in

the network and record actual changes in the network.

With respect to the ozone monitoring network in the Phoenix area, changes reflect an effort undertaken several years ago by ADEQ, Maricopa County, Pinal County, and the tribes in the Phoenix area to take a more holistic view of the ozone monitoring network, in part due to concerns about 8-hour ozone concentrations. EPA supported this effort to reassess the ozone network in light of the new 8-hour ozone NAAQS and encouraged other areas to conduct the same type of assessment. The designation of the Phoenix area as an 8-hour ozone nonattainment area caused Maricopa County Environmental Services Department (MCESD), ADEQ, Pinal County and the tribes to make changes to the monitoring network to better track ozone concentrations in the 8-hour ozone nonattainment area, which is larger than the 1-hour ozone nonattainment and which includes the West Valley area.

Specifically, the commenter notes that, in our proposal, we indicate that the number of ozone monitoring sites in the Phoenix metropolitan area had been reduced from 21 in 2002 to 18 in 2004 and that some locations had changed but provide no further information describing these changes to the monitoring network. As discussed below, the actual net change in the number of ozone monitoring stations from 2002 to 2004 was from 21 stations to 20 stations. In our proposal, we inadvertently did not include one of the stations (*i.e.*, the Tonto National Monument station) that had been listed for 2002 in our 2004 data table, and one of the other stations that had been listed in 2002 was in the process of being relocated during 2004 and thus was not included in the 2004 data table either. We note that these network changes are documented on an annual basis in the Annual Monitoring Network Reviews prepared by Maricopa County and made available to the public through the Web link cited above.

With respect to the changes in the ozone monitoring network between 2002 and 2004, we should have included the Tonto National Monument site in our summary of ozone data in table 1 of the proposed rule (70 FR 13429).² In that table, we did not include either the Maryvale station (closed in March 2004) that had been

² The Tonto National Monument ozone monitoring site is located in Gila County and is operated by ADEQ. No exceedances were measured there during the 2002 to 2004 period (*i.e.*, the period for which data is available through AQS). The highest maximum hourly reading over that period was 0.112 ppm.

part of the 2002 network or the Buckeye station (to which the Maryvale station was re-located) in the fast-growing West Valley area because no data was gathered at either site for much of the 2004 ozone season (the Buckeye station opened in August 2004).³ Thus, the reduction in the number of stations from 21 to 18 that was cited in the proposed rule was actually a reduction from 21 to 20. Other changes in the network between 2002 and 2004 included: (1) In mid-2003, the "Surprise" station was relocated due to power and access problems to another site within the City of Surprise referred to as the "Dysart" site; and (2) the ozone monitor at the Mesa site was permanently shut down in November 2002 to conserve personnel and equipment resources but also in recognition of the redundancy of ozone data from that particular site given that the Tempe station, which is merely three miles away, also monitors ozone. The relocation of the monitoring sites within the City of Surprise resulted in no net change in the number of ozone monitoring stations while the closing of the Mesa ozone site accounts for the net decrease of one station between 2002 and 2004 in the ozone monitoring network in the Phoenix area. We believe that the closing of a single monitoring station that was deemed redundant where there are still 20 monitoring stations remaining in operation does nothing to undermine our conclusion that the Phoenix area ozone monitoring network and the data it generates are adequate for the purposes of SIP development and redesignation under the Clean Air Act. Given that the data from the remaining 20 monitors supports a finding of attainment, EPA concludes that the monitoring network fully supports this redesignation.

Comment 3

Although, in principle, we do not object to the substitution of the CBG program for the clean fuel fleet requirement (provided the requirement that the substitute program will result in at least equivalent reductions in ozone), recent actions by the Governor's office call into question the State's commitment to the CBG program in the long term. Just last week, the *Arizona Republic* reported that Governor Janet Napolitano intends to seek a waiver of the CBG requirement this coming summer due to high gas prices. See "Napolitano May Seek Gas Price Relief," *Arizona Republic*, April 11, 2005. We do not believe that high gas

³ In 88 days of full operation in 2004, the Buckeye station recorded a highest maximum daily 1-hour ozone concentration of 0.088 ppm.

prices are a proper basis for such a waiver and fully anticipate the EPA will reject the request; however, in the article, the Governor's spokeswoman was quoted as saying "[t]he governor will continue to hammer on the Federal Government that we need to figure this out." *Id.* Clearly, these comments call into question any commitments the State has made with respect to the CBG program and suggest that given the high price of gasoline (which is only expected to increase), approval of the State's request to opt out of the CFF requirement at this time may be ill-advised and short sighted. Rather than approving the CBG program only to field repeated waiver requests, it may be more appropriate for EPA to encourage the State to pursue the use of alternative fuels by implementing a clean fuel fleet program.

Response 3

The commenter has not objected to the substitution of the CBG program for the Clean Fuel Fleet requirement, provided there is at least an equivalent reduction in ozone. EPA's proposed approval of the substitution made a demonstration of equivalency, as required by the CAA, and the commenter does not dispute this demonstration.

The commenter does, however, express concern about the State's commitment to the CBG program, given recent publicity that the State has considered requesting a waiver of the CBG requirements due to rising gasoline prices. We note that the CBG program is a control measure which EPA has approved into the Arizona SIP (in a **Federal Register** notice dated February 10, 1998 and a subsequent approval notice dated March 4, 2004), making it a federally enforceable measure. There are no waiver provisions under the SIP-approved CBG program for the summertime (*i.e.*, ozone season) gasoline formulation nor are any such waiver provisions being approved as part of this action. Thus, if the State wants to make revisions to, or to temporarily suspend, the summertime gasoline formulation requirements of the CBG program, the State must follow CAA requirements applicable to any SIP revision, including provisions of section 110(l) regarding interference with attainment and applicable requirements, and requirements for public notice and comment, and EPA must follow similar notice and comment requirements for its action on such a SIP revision request.

In the past two years, the State has on several occasions requested and in two cases received from EPA a grant of enforcement discretion notifying CBG

suppliers that EPA would not enforce the CBG requirements due to serious supply problems. In cases where EPA has granted such enforcement discretion, the discretion was of a temporary nature (*i.e.*, 30 days or less) and was granted due to emergency situations such as a pipeline break, which resulted in legitimate problems with getting supplies of CBG to the Phoenix area, and not solely due to high gasoline prices. Thus, the commenter's objection does not relate to the justification for the proposed substitution of the CBG program and does not undermine EPA's belief in the future validity of the program as a viable component of the maintenance demonstration. EPA concludes that the justification for approving the substitution of emissions reductions from the CBG program for the Clean Fuel Fleet program is still sound.

Comment 4

Finally, we disagree that the Redesignation Request and Maintenance Plan properly includes contingency measures. As EPA acknowledges in the proposed rule, the measures designated as "contingency measures" in the Redesignation Request and Maintenance Plan are already implemented. According to CAA section 175A(d), the purpose of contingency provisions is to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Obviously, if the so called "contingency measures" are already being implemented when a violation occurs, there is nothing to suggest that their continued implementation would ensure that the situation will be corrected. Rather, the Act clearly envisions *additional* measures which are automatically and immediately implemented if and when a violation occurs. If and when a violation occurs, the fact that the State did not rely upon these measures in its maintenance demonstration is meaningless. If a violation occurs, protection of the public health is paramount and the Clean Air Act contemplates and requires an immediate response that does not require additional EPA or State action. The State's commitment to adopt nonspecific additional contingency measures over a 15 to 21 month period if the "trigger" of at least four 0.120 ppm readings is met falls far short of this requirement of the Act. We believe that EPA's approval of the Redesignation Request and Maintenance Plan without requiring meaningful and appropriate contingency provisions

would be arbitrary and capricious and contrary to law.

Response 4

The commenter is correct in that the contingency provisions of the Redesignation Request and Maintenance Plan rely on measures that have already been implemented; however, we disagree that such measures, together with an enforceable mechanism to identify, adopt and implement additional contingency measures, do not suffice for the purposes of a maintenance plan under CAA section 175A(d).

Section 175A(d) of the Act requires that each maintenance plan "contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area." (emphasis added). First, as a general matter, we note that the italicized language clearly indicates that Congress expressly delegated authority to EPA to determine what contingency provisions in maintenance plans are necessary. More specifically, we have consistently held that section 175A(d) does not require that the contingency provisions developed for maintenance plan purposes contain fully adopted measures that will take effect (upon the occurrence of a given event) without further action by the State or EPA. Memorandum from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. EPA, "Procedures for processing Requests to Redesignate Areas to Attainment" (September 4, 1992) ("Calcagni memo") at 12.⁴ In this regard, we distinguish the contingency provision requirements for maintenance plans from those for nonattainment plans. For the latter, the CAA requires fully adopted measures that will take effect (upon the occurrence of a given event) without further action by the

⁴ The commenter has misstated the standard set by Congress for implementing contingency measures under section 175A as requiring implementation "immediately" and "automatically" after a violation. On the contrary, section 175A(d) provides that "each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard * * * ." (emphasis added.) EPA has approved as "prompt" contingency measures under section 175A(d) that are implemented as soon as a year and as long as two years after being triggered. See, *e.g.*, 60 FR 12459, at 12470, 12472 (March 7, 1995); 68 FR 4847, 4859 (January 30, 2003) and 68 FR 25418 (May 12, 2003); and 66 FR 53094, at 53102-53103 (October 19, 2001).

State or EPA. See CAA sections 172(c)(9), 182(c)(9), and 187(a)(3).

However, we note that the contingency provisions in a maintenance plan do become an enforceable part of the SIP (upon approval by EPA) and that the provisions should ensure that contingency measures are adopted expeditiously once they are triggered. We believe that the contingency provisions in a maintenance plan should clearly identify measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. As a necessary part of the plan, the State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. Calcagni memo, page 12.

We reviewed the contingency provisions in the Redesignation Request and Maintenance Plan with the above considerations in mind and found them acceptable. The contingency provisions in the Redesignation Request and Maintenance Plan identify three specific measures for implementation: expansion of Area A boundaries, gross polluter option for vehicle inspection and maintenance (I/M) program waivers, and increased waiver repair limit options. See pages 3–17 and 3–18 of the Redesignation Request and Maintenance Plan and 70 FR 13425, at 13438–13439 (March 21, 2005). The Redesignation Request and Maintenance Plan anticipates that these measures would be implemented “early,”⁵ and in fact, all of these measures have been implemented and continue to provide emissions reductions within the Phoenix metropolitan 1-hour ozone nonattainment area. Although these measures have been implemented, they will continue to provide additional reductions in future years. The Redesignation Request and Maintenance Plan also describes when these measures were adopted and how they are being implemented. See pages VI–18 through VI–21 in MAG’s *Technical Support Document for Ozone Modeling in Support of the One-Hour Ozone Redesignation Request and Maintenance Plan for the Phoenix Metropolitan Nonattainment Area, November 2003* (included as Exhibit 2 of Appendix A of the Redesignation Request and Maintenance Plan). Because they were expected to be (and have been) implemented “early,” there

is no need to identify a triggering event for them. Further, we note that none of the three contingency measures was needed to attain the 1-hour ozone NAAQS nor are they relied upon for the purposes of the maintenance demonstration.⁶

The positive effects of these contingency measures are continuing in nature, and are surplus, permanent and federally enforceable. The continuing reduction credits from the contingency measures are, in effect, set aside to be applied in the event that maintenance is not achieved. EPA has historically allowed early reductions under section 172(c)(9)—that is, reductions achieved before the contingency measure is “triggered”—to be used as contingency measures, because if it did not do so it would discourage areas from implementing “all reasonably available control measures as expeditiously as practicable” as required by CAA section 172(c)(1). See also the August 13, 1993 memorandum: “Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas.” Were areas to hold such measures in reserve to serve as contingency measures, EPA would approve them. EPA sees only air quality benefits in allowing areas to implement such measures early and to get additional reductions in advance, potentially preventing any future violations.

We believe that it would be illogical to penalize maintenance areas that are taking extra steps (*i.e.*, through “early” implementation of contingency measures) to ensure maintenance of the NAAQS by requiring them to adopt yet additional contingency measures now to backfill for the early activation of contingency measures.⁷ Our interpretation of the contingency measure requirement and acceptance of “early” implementation of contingency measures in fulfillment of that requirement under section 172(c)(9) was recently upheld by the Fifth Circuit Court of Appeals. See *La. Env’tl. Action Network v. United States Env’tl. Protection Agency*, 382 F.3d 575 (5th Cir. 2004) (EPA approval of contingency

measures vacated on different grounds). In the *La. Env’tl. Action Network* case, the court stated, “Here, the EPA’s allowance of early reductions to be used as contingency measures comports with a primary purpose of the CAA—the aim of ensuring that nonattainment areas reach NAAQS compliance in an efficient manner—and necessary requirements of the CAA.” *Id.* at 581. While the *La. Env’tl. Action Network* case specifically addressed the nonattainment plan contingency measure requirements under section 172(c)(9), we would expect a court to apply similar logic in reviewing EPA’s acceptance of “early implementation” of contingency measures under section 175A(d) in support of the aim of ensuring that attainment areas continue to maintain the NAAQS as well.

Of course, if an area experiences a NAAQS violation despite early implementation of contingency measures, then additional contingency measures would be needed to promptly correct the violation, and the contingency provisions of the Redesignation Request and Maintenance Plan provide a mechanism under which such additional measures will be identified, adopted and implemented. This procedure is triggered by the occurrence of a fourth highest daily maximum hourly measurement exceeding 0.120 (at any given station over a three-year period) whereby additional measures (*i.e.*, in addition to those already implemented) will be considered.⁸ Once the triggering event occurs, the Redesignation Request and Maintenance Plan establishes that (1) verification of the monitoring data is to be completed within three months of the triggering event; (2) the additional measure is to be considered for adoption six months after verification of the data (nine months after the triggering event); and (3) the measure is to be implemented within six to 12 months after adoption, *i.e.*, 15 to 21 months after the triggering event. The Redesignation Request and Maintenance Plan does not identify the specific additional measures that would be adopted and implemented but notes that the existing contingency measures may be strengthened to provide additional

⁶ We also note that Arizona has not chosen to deactivate, and place in reserve, any SIP control measures as part of this redesignation request for the 1-hour ozone standard in the Phoenix metropolitan area.

⁷ In prior rulemakings, we have approved other maintenance plans that include contingency measures that will be implemented “early.” See the San Francisco Bay area 1-hour ozone maintenance plan [NPRM: 59 FR 49361 at 49368–49369 (September 28, 1994); FR: 60 FR 27028 (May 22, 1995)] and the Salt Lake City carbon monoxide maintenance plan [Direct Final Rule: 64 FR 3216, at 3221 (January 21, 1999)].

⁵ In this instance, “early” refers to measures that are implemented prior to occurrence of a triggering event, such as a NAAQS violation, during the maintenance period.

⁸ We note that the procedure established in the Redesignation Request and Maintenance Plan for developing additional contingency measures is triggered prior to the occurrence of either an exceedance or a violation and therefore is consistent with the principle of maintaining the NAAQS. Exceedances occur when the daily maximum value equals or exceeds 0.125 ppm, and a violation occurs when the expected number of exceedances-days per calendar year averaged over the past three calendar years is equal to or less than 1.0.

emissions reductions as needed. This mechanism provides further assurance that the 1-hour ozone NAAQS will not be violated after redesignation of the Phoenix metropolitan area to attainment (by establishing a triggering event short of a violation) but that, if such a violation were to occur, it will be promptly corrected. The selection of a triggering event short of a violation would allow the State "to take early action to address potential violations of the NAAQS before they occur." Calcagni memo, page 12.

The commenter appears to assert that it is possible that a violation could occur of such severity that the contingency provisions would be insufficient, and therefore inadequate. This interpretation of the statute is unreasonable. EPA cannot expect Arizona to provide contingency provisions that, by themselves, address every hypothetical violation of the NAAQS, no matter how severe. The State is not compelled to develop contingency provisions that are capable of addressing any imaginable violation, no matter how severe. EPA is applying a reasonable interpretation, considering the contingency provisions in the context of a reasonable range of possible violations. In the event that the specified contingency measures are less than is necessary to avoid a violation, Arizona has committed to adopt and implement additional measures. Moreover, it is evident in section 110(k)(5), as well as within section 175A(d) itself, that Congress contemplated that there may be situations in which the contingency provisions are insufficient to address a violation. Section 110(k)(5) authorizes EPA to require a State to revise its SIP where EPA finds that the SIP is substantially inadequate to maintain the NAAQS. The final sentence of section 175A(d) contemplates that EPA may, in its discretion, determine that a violation of the NAAQS requires a revision to the State SIP. Had Congress intended contingency provisions to successfully address every conceivable violation of the standard, additional revisions to the SIP in response to a violation of the NAAQS would be unnecessary. Thus, we continue to believe that the contingency provisions in the Redesignation Request and Maintenance Plan, including both specific contingency measures that have already been implemented as well as a mechanism for identifying, adopting and implementing additional contingency measures, fully comply with the statutory requirements of such

provisions under section 175A(d) of the Act.

III. EPA's Final Action

No comments were submitted that change our assessment that the State of Arizona's "opt-out" request, serious area plan, maintenance plan and redesignation request for the Phoenix metropolitan 1-hour ozone nonattainment area comply with the CAA and EPA regulations. Therefore, under the Clean Air Act, we are fully approving three sets of revisions to the Arizona SIP that have been submitted to us in connection with the Phoenix metropolitan 1-hour ozone nonattainment area and the State's redesignation request for this area from "nonattainment" to "attainment."

First, under sections 182(c)(4)(B) and 110(k)(3) of the CAA, we are approving the State of Arizona's 1998 submittal of a request to "opt-out" of the Clean Fuel Fleet program and to approve the cleaner burning gasoline (CBG) program as a substitute measure.

Second, under section 110(k)(3) of the Act, we are approving the State's 2000 submittal of the Serious Area Ozone Plan as meeting the applicable requirements for serious 1-hour ozone nonattainment areas. As part of our overall approval of the Serious Area Ozone Plan, we approve the following specific plan elements:

- Periodic (ozone season) inventory update for 1996 as required under section 182(a)(3)(A); and
- Enhanced monitoring as required under section 182(c)(1).

Third, under sections 107(d)(3)(D) and 110(k)(3), we are approving the State's 2004 submittal of the Redesignation Request and Maintenance Plan as meeting CAA requirements for redesignation requests and maintenance plans under sections 107(d)(3)(E) and 175A and are redesignating the Phoenix metropolitan area from nonattainment to attainment for the 1-hour ozone NAAQS. In this regard, we find that:

- The Phoenix metropolitan 1-hour ozone nonattainment area has continued to attain the 1-hour ozone NAAQS based on quality-assured data for the years 2002 through 2004 (thus, certain requirements of title I, part D, as set forth in the proposed notice at 70 FR 13431-13432 (March 21, 2005), including the attainment demonstration, non-RACT reasonably available control measures (RACT), reasonable further progress, contingency measures, and other related requirements, continue to be inapplicable to the area);⁹

⁹ EPA has previously determined that the Phoenix metropolitan 1-hour ozone nonattainment area had

- The SIP for the Phoenix metropolitan 1-hour ozone nonattainment area has been fully approved by EPA under section 110(k);

• The improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP (principally, the VOC RACT rules, stage II vapor recovery rules, the enhanced vehicle inspection and maintenance program, and the cleaner burning gasoline program), and applicable Federal air pollution control regulations;

- The Redesignation Request and Maintenance Plan meets the requirements of section 175A of the CAA;

• The State of Arizona has met all requirements applicable to the Phoenix metropolitan 1-hour ozone nonattainment area under section 110 and part D of title I of the CAA; and

- For the reasons described in the proposal, the State has satisfied all of the requirements for redesignation under section 107(d)(3)(E).

As part of our overall approval of the Redesignation Request and Maintenance Plan, we approve the following specific plan elements:

- Periodic (ozone season) inventory update for 1999 as required under section 182(a)(3)(A);
- 1998 and 1999 base cases (episodic), 2006 interim year, and 2015 maintenance year emissions inventories and maintenance demonstration;
- Implementation of the following control measures for maintenance purposes: CARB Phase 2 and Federal Phase II Reformulated Gasoline with a maximum 7 psi vapor pressure requirement from May through September, coordination of traffic signal systems, tougher enforcement of vehicle registration and emission test compliance, one-time waiver from vehicle emissions test, development of intelligent transportation systems, phased-in emission test cutpoints, and Maricopa County Rule 348 (related to aerospace manufacturing and rework operations).

- Contingency provisions, including the following measures: expansion of Area A boundaries, gross polluter option for I/M program waivers, and increased waiver repair limit options, as well as a mechanism (based on ambient ozone concentration readings) for triggering consideration of additional (or strengthened) contingency measures;

attained the 1-hour NAAQS and, based on that determination, that certain CAA requirements would not be applicable so long as the area continued to attain. See 66 FR 29230 (May 30, 2001).

- Commitments by ADEQ and the Maricopa County Environmental Services Department (MCESD) to continue to operate an appropriate air quality monitoring network of National Air Monitoring Stations (NAMS) and State and Local Air Monitoring Stations (SLAMS) in accordance with 40 CFR part 58 to verify continued attainment of the 1-hour ozone standard;

- Commitment by Maricopa County to prepare periodic emission inventories every three years in coordination with ADEQ, the Arizona Department of Transportation, and MAG (this commitment extends to a review and evaluation of changes in the inventory through the regional air quality planning process to determine if additional measures should be considered);

- Commitment by MAG to prepare a revised maintenance plan eight years after redesignation to attainment; and

- VOC and NO_x motor vehicle emissions budgets (corresponding to a weekday in August) for transportation conformity purposes under CAA section 176(c): 71.9 metric tons per day (mtpd) for VOC and 104.8 mtpd for NO_x in 2006 and 48.7 mtpd for VOC and 53.6 mtpd for NO_x in 2015.

Lastly, as noted above, we are withdrawing the March 21, 2005 proposal as it relates to the revision of the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area to exclude the Gila River Indian Reservation and will instead address this issue in a separate rulemaking.

EPA finds that there is good cause for approval of this redesignation to attainment and SIP revision to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment which relieves the area from certain Clean Air Act requirements that would otherwise apply to it. The immediate effective date for this redesignation is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction” and section 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.”

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (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” are 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.”

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

As indicated above, EPA had proposed to revise the boundary of the Phoenix metropolitan 1-hour ozone nonattainment area to exclude the Gila River Indian Reservation, but has decided to withdraw that part of the

proposal and to address the boundary issue in a separate rulemaking. Consistent with EPA policy, EPA has communicated this change to representatives of the Gila River Indian Community and explained our rationale for withdrawing the proposal and conducting a separate rulemaking. EPA finds that this action, which no longer includes the boundary change, will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard and redesignates the area to attainment for the purposes of air quality planning and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children.

In reviewing SIP submissions and redesignation requests, 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 or redesignation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission or redesignation request, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: May 20, 2005.

Alexis Strauss,

Acting Regional Administrator, Region 9.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraphs (c)(123), (c)(124), and (c)(125) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(123) The following plan was submitted on December 7, 1998, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) Letter and enclosures regarding Arizona's Intent to "Opt-out" of the Clean Fuel Fleet Program, adopted by the Arizona Department of Environmental Quality on December 7, 1998.

(124) The following plan was submitted on December 14, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) *Final Serious Area Ozone State Implementation Plan for Maricopa County*, dated December 2000, adopted by the Arizona Department of Environmental Quality on December 14, 2000.

(125) The following plan was submitted on April 21, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) *One-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area*, dated March 2004, adopted by the Maricopa Association of Governments Regional Council on March 26, 2004 and adopted by the Arizona Department of Environmental Quality on April 21, 2004.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—[Amended]

■ 2. In § 81.303, the table entitled "Arizona—Ozone (1-Hour Standard)" is amended by revising the entry for the Phoenix Area to read as follows:

§ 81.303 Arizona

* * * * *

ARIZONA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date	Type	Date	Type
Phoenix Area: Maricopa County (part) The Urban Planning Area of the Maricopa Association of Government is bounded as follows: 1. Commencing at a point which is the intersection of the eastern line of Range 7 East, Gila and Salt River Baseline and Meridian, and the southern line of Township 2 South, said point is the southeastern corner of the Maricopa Association of Governments Urban Planning Area, which is the point of beginning; 2. Thence, proceed northerly along the eastern line of Range 7 East which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statute Section 11–109, to a point where the corner line of Range 7 East intersects the northern line of Township 1 North, said point is also the intersection of the Maricopa County Line and the Tonto National Forest Boundary, as established by Executive Order 869 dated July 1, 1908, as amended and shown on the U.S. Forest Service 1969 Planimetric Maps; 3. Thence, westerly along the northern line of Township 1 North to approximately the southwest corner of the southeast quarter of Section 35, Township 2 North, Range 7 East, said point being the boundary of the Tonto National Forest and Usery Mountain Semi-Retional Park;	6/14/05	Attainment		

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
4. Thence, northerly along the Tonto National Forest Boundary, which is generally the western line of the east half of Sections 26 and 35 of Township 2 North, Range 7 East, to a point which is where the quarter section line intersects with the northern line of Section 26, Township 2 North, Range 7 East, said point also being the southeast corner of the Usery Mountain Semi-Regional Park; 5. Thence, westerly along the Tonto National Forest Boundary, which is generally the south line of Sections 19, 20, 21 and 22 and the southern line of the west half of Section 23, Township 2 North, Range 7 East, to a point which is the southwest corner of Section 19, Township 2 North, Range 7 East; 6. Thence, northerly along the Tonto National Forest Boundary to a point where the Tonto National Forest Boundary intersects with the eastern boundary of the Salt River Indian Reservation, generally described as the center line of the Salt River Channel; 7. Thence, northeasterly and northerly along the common boundary of the Tonto National Forest and the Salt River Indian Reservation to a point which is the northeast corner of the Salt River Indian Reservation and the southeast corner of the Fort McDowell Indian Reservation, as shown on the plat dated July 22, 1902, and recorded with the U.S. Government on June 15, 1902; 8. Thence, northeasterly along the common boundary between the Tonto National Forest and the Fort McDowell Indian Reservation to a point which is the northeast corner of the Fort McDowell Indian Reservation; 9. Thence, southwesterly along the northern boundary of the Fort McDowell Indian Reservation, which line is a common boundary with the Tonto National Forest, to a point where the boundary intersects with the eastern line of Section 12, Township 4 North, Range 6 East; 10. Thence, northerly along the eastern line of Range 6 East to a point where the eastern line of Range 6 East intersects with the southern line of Township 5 North, said line is the boundary between the Tonto National Forest and the east boundary of McDowell Mountain Regional Park; 11. Thence, westerly along the southern line of Township 5 North to a point where the southern line intersects with the eastern line of Range 5 East which line is the boundary of Tonto National Forest and the north boundary of McDowell Mountain Regional Park; 12. Thence, northerly along the eastern line of Range 5 East to a point where the eastern line of Range 5 East intersects with the northern line of Township 5 North, which line is the boundary of the Tonto National Forest; 13. Thence, westerly along the northern line of Township 5 North to a point where the northern line of Township 5 North intersects with the easterly line of Range 4 East, said line is the boundary of Tonto National Forest; 14. Thence, northerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects with the northern line of Township 6 North, which line is the boundary of the Tonto National Forest; 15. Thence, westerly along the northern line of Township 6 North to a point of intersection with the Maricopa-Yavapai County line, which is generally described in Arizona Revised Statute Section 11–109 as the center line of the Aqua Fria River (Also the north end of Lake Pleasant); 16. Thence, southwesterly and southerly along the Maricopa-Yavapai County line to a point which is described by Arizona Revised Statute Section 11–109 as being on the center line of the Aqua Fria River, two miles southerly and below the mouth of Humbug Creek; 17. Thence, southerly along the center line of Aqua Fria River to the intersection of the center line of the Aqua Fria River and the center line of Beardsley Canal, said point is generally in the northeast quarter of Section 17, Township 5 North, Range 1 East, as shown on the U.S. Geological Survey's Baldy Mountain, Arizona Quadrangle Map, 7.5 Minute series (Topographic), dated 1964; 18. Thence, southwesterly and southerly along the center line of Beardsley Canal to a point which is the center line of Beardsley Canal where it intersects with the center line of Indian School Road; 19. Thence, westerly along the center line of West Indian School Road to a point where the center line of West Indian School Road intersects with the center line of North Jackrabbit Trail; 20. Thence, southerly along the center line of Jackrabbit Trail approximately nine and three-quarter miles to a point where the center line of Jackrabbit Trail intersects with the Gila River, said point is generally on the north-south quarter section line of Section 8, Township 1 South, Range 2 West; 21. Thence, northeasterly and easterly up the Gila River to a point where the Gila River intersects with the northern extension of the western boundary of Estrella Mountain Regional Park, which point is generally the quarter corner of the northern line of Section 31, Township 1 North, Range 1 West;				

ARIZONA—OZONE (1-HOUR STANDARD)—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
22. Thence, southerly along the extension of the western boundary and along the western boundary of Estrella Mountain Regional Park to a point where the southern extension of the western boundary of Estrella Mountain Regional Park intersects with the southern line of Township 1 South; 23. Thence, easterly along the southern line of Township 1 South to a point where the south line of Township 1 South intersects with the western line of Range 1 East, which line is generally the southern boundary of Estrella Mountain Regional Park; 24. Thence, southerly along the western line of Range 1 East to the southwest corner of Section 18, Township 2 South, Range 1 East, said line is the western boundary of the Gila River Indian Reservation; 25. Thence, easterly along the southern boundary of the Gila River Indian Reservation which is the southern line of Sections 13, 14, 15, 16, 17, and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statutes Section 11–109 and 11–113, which is the eastern line of Range 1 East; 26. Thence, northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River; 27. Thence, southerly up the Gila River to a point where the Gila River intersects with the southern line of Township 2 South; and 28. Thence, easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line Range 7 East.				

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[FR Doc. 05–10792 Filed 6–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 271**

[FRL–7924–1]

Texas: Final Authorization of State Hazardous Waste Management Program Revision**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The EPA is granting Texas final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on March 18, 2005, and provided for public comment. The public comment period ended on April 18, 2005. We received no comments. No further opportunity for comment will be provided. EPA has determined that Texas' program revisions satisfy all the requirements needed to qualify for final authorization, and is authorizing the State's changes through this final action.

DATES: This final authorization will be effective on June 14, 2005.

ADDRESSES: You can view and copy Texas's application and associated publicly available materials from 8:30

a.m. to 4 p.m. Monday through Friday at the following locations: Texas Commission on Environmental Quality (TCEQ), 12100 Park 35, Circle, Austin TX 78753–3087, (512) 239–1121 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT:

Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202–2733, patterson.alima@epa.gov, (214) 665–8533.

SUPPLEMENTARY INFORMATION: On March 18, 2005, U.S. EPA published a proposed rule (70 FR 13127) proposing to grant Texas authorization for changes to its Resource Conservation and Recovery Act program, listed in section D of that notice, which was subject to public comment. No comments were received. We hereby determine that Texas' hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization.

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from the EPA under RCRA

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

B. What Decisions Have We Made in This Rule?

We conclude that Texas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Texas Final authorization to operate its hazardous waste program with the changes described in the authorization application. Texas has the responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal

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

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

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

- Do inspections, and require monitoring, tests, analyses, or reports; and
- Enforce RCRA requirements and suspend or revoke permits.

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

D. Proposed Rule

On March 18, 2005, (70 FR 13127), EPA published a proposed rule. In that rule we proposed granting authorization of changes to Texas' hazardous waste program and opened our decision to public comment. The Agency received no comments on this proposal. EPA found Texas' RCRA program to be satisfactory.

E. What Has the State of Texas Previously Been Authorized For?

Texas received final authorization to implement its Hazardous Waste Management Program on December 12,

1984, effective December 26, 1984 (49 FR 48300). This authorization was clarified in a notice published in the **Federal Register** on March 26, 1985 (50 FR 11858). Texas received final authorization for revisions to its program in notices published in the **Federal Register** on January 31, 1986, effective October 4, 1985 (51 FR 3952); and on December 18, 1986, effective February 17, 1987 (51 FR 45320). EPA authorized the following revisions: March 1, 1990, effective March 15, 1990 (55 FR 7318); on May 24, 1990, effective July 23, 1990 (55 FR 21383); on August 22, 1991, effective October 21, 1991 (56 FR 41626); on October 5, 1992, effective December 4, 1992 (57 FR 45719); on April 11, 1994, effective June 27, 1994, (59 FR 16987); on April 12, 1994, effective June 27, 1994 (59 FR 17273); On September 12, 1997, effective November 26, 1997 (62 FR 47947); and on August 18, 1999 effective October 18, 1999 (64 FR 44836) and July 13, 2000; effective September 11, 2000 (65 FR 43246). EPA incorporated by reference the State of Texas Base Program and additional program revisions in RCRA Clusters III and IV into the CFR on September 14, 1999 (64 FR 49673); effective November 15, 1999. The TCEQ partially adopted the Hazardous Remediation Waste Management Requirements (HWIR-Media). The following are the Federal rules: 40 CFR 260.10, 261.4(g) through 261.4(g)(2)(ii), 264.1(j)(3)(i) through 264.1(j)(3), 264.554 through 264.554(m), 265.1(b), 268.2(c), 268.50(g) and 270.42 Appendix I. The HWIR-Media rule is an optional rule; states can partially adopt the rule if the State has in place other mechanism to address those hazardous wastes. The TCEQ did not adopt 40 CFR 270.11(d)(1)–(3), 270.68, 270.73(a), 270.79, 270.80(a)–(f), 270.85(a)–(c), 270.95, 270.100, 270.105, 270.110 introduction through 270.110(i), 270.115, 270.120, 270.125, 270.130(a)–(b), 270.135 introduction through 270.135(c), 270.140 introduction

through 270.140(c), 270.145(a) introduction through 270.145(d)(3), 270.150(a)–(g), 270.155(a) introduction through 270.155(b), 270.160 introduction through 270.160(c), 270.165, 270.170, 270.175(a) introduction through 270.175(c), 270.180(a)–(b), 270.185, 270.190(a)–(d), 270.195, 270.200, 270.205, 270.210 introduction through 270.210(b), 270.215(a), 270.215(a)–(d), 270.220(a)–(b), 270.225, and 270.230(a) through 270.230(e)(2). Therefore, these Federal rules listed in this document that the State did not adopt are not part of the authorized program. However, the TCEQ has an Office of Remediation which is responsible for the cleanup of releases of hazardous waste and pollutants so that threats to human health and the environment are controlled or eliminated. The TCEQ rules which address the Remedial Action Plan requirement of the HWIR-media rule are covered in the Texas Risk Reduction Program rules at 30 Tex. Admin. Code Ch. 350 and 30 Tex. Admin. Code Section 350.75. The Texas Risk Reduction Rules are not part of Texas' authorized Federal RCRA program.

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

On March 28, 2002, the State of Texas submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Texas' revisions consist of regulations which specifically govern Federal Hazardous Waste promulgated from July 1, 1995, to June 30, 2000 (RCRA Clusters VII through X). We now make a final decision, that Texas' hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant Texas Final authorization for the following program changes:

Description of Federal requirement (include checklist No., if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs. (Checklist 153).	61 FR 34252 July 01, 1996	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.78(f)(3)(A)–(G) and (g)(3)(A)–(G), effective October 19, 1998.

Description of Federal requirement (include checklist No., if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
2. Hazardous Waste Treatment; Storage and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments and Containers. (Checklists 154, 154.1, 154.2, 154.3, 154.4, 154.5, and 154.6).	61 FR 59931 November 25, 1996; 59 FR 62896 December 6, 1994; 60 FR 26828 May 19, 1995; 60 FR 50426 September 29, 1995; 60 FR 56952 November 13, 1995; 61 FR 4903; 61 FR 28508 June 5, 1996.	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.061 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.31, effective November 15, 2001, as amended; Section 335.24(e), and, effective April 4, 1999, as amended, Sections 335.69(f)(2), 335.69(a)(1)(A)–(B), effective November 15, 2001, as amended; and 305.50(4)(A), effective November 18, 2001, Sections 335.152(a)(1), 335.152(a)(4), 335.152(a)(7)–(9), 335.152(a)(16)–(19), effective November 18, 2001; 335.111(a), effective November 15, 2001; 335.112(a)(1), 335.112(a)(4), 335.112(a)(8)–(10), 335.112(a)(19)–(21), 335.112(a)(24), effective November 18, 2001; 305.122(a), effective November 15, 2001, as amended.
3. Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance. (Checklist 155).	62 FR 1992 January 14, 1997	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.341(c), effective April 30, 2000,
4. Military Munitions Rule; Hazardous Waste Identification and Management Explosives Emergencies; Manifest Exemptions for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties. (Checklist 156).	62 FR 6622 February 12, 1997	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Section 361.061 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1, and 335.61, effective April 12, 2001, as amended; Sections 335.10(h), effective May 20, 1999, 335.91(f), and (g), 335.41(d)(2), effective April 12, 2001, as amended, 335.271, 335.272, effective April 12, 2001, as amended; 335.152(a)(4), 335.152(a)(20), 335.112(a)(4), 335.112(a)(22), effective November 18, 2001, as amended and 305.69(j) effective April 12, 2001, as amended.
5. Land Disposal Restrictions—Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions. (Checklist 157).	62 FR 25998 May 12, 1997	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.431, effective April 30, 2000, as amended; 30 Texas Administrative Code Sections 335.1 (definition of solid waste), effective May 30, 2001, as amended; 335.17(a)(9)–(12), and 335.24(c)(2), effective April 4, 1999 as amended. The State law is more stringent than the Federal rule because the State does not have provisions equivalent to 40 CFR 268. (a)(10) regarding tolling agreements. State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may assure a variance from an applicable treatment standard.

Description of Federal requirement (include checklist No., if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
6. Hazardous Waste Management System; Testing and Monitoring Activities. (Checklist 158).	62 FR 32452 June 13, 1997	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.31, effective October 19, 1998; Sections 335.152(a)(17)–(18), 335.152(a)(22)(E), 335.112(a)(19)–(20), effective April 12, 2001; 335.221(a)(15), 335.221(17)–(18), effective April 4, 1999 and 335.221(a), effective April 4, 1999.
7. Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions. (Checklist 159).	62 FR 32974 June 17, 1997	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.003 (Vernon 2001), effective September 1, 1991, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, 30 Texas Administrative Code Section 335.1 (def of Hazardous waste) effective January 26, 1994, as amended and Section 335.29, effective April 4, 1999.
8. Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance. (Checklist 160).	62 FR 37694 July 14, 1997	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431(c), effective April 30, 2000.
9. Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production. (Checklist 161).	62 FR 45568 August 28, 1997	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431(c), effective April 30, 2000.
10. Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendments. (Checklist 163).	62 FR 64636 December 8, 1997	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.152(a)(1), 335.152(a)(4), 335.152(a)(17)–(19); 335.112(a)(1), 335.112(a)(4), 335.112(a)(19)–(21), 335.112(a)(24), effective November 18, 2001, as amended; 305.50(4)(A), effective March 21, 2000.
11. Kraft Mill Steam Stripper Condensate Exclusion. (Checklist 164).	63 FR 18504 April 15, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of solid waste)(A)(iv), effective November 15, 2001.

Description of Federal requirement (include checklist No., if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
12. Recycled Used Oil Management Standards; Technical Correction and Clarification. (Checklist 166).	63 FR 24963 May 6, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Chapter 371, effective September 1, 1991, as amended; 30 Texas Administrative Code Section 3355.78(j), effective October 19, 1998; Sections 335.24(c)(4)(A)–(C), effective April 14, 1999; Sections 324.1, 324.3, 324.6, 324.11–14, effective August 8, 1999.
13. Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes. (Checklist 167 A).	63 FR 28556 May 26, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated §361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; Section 335.1(A)(iv) (definition of hazardous waste), effective January 26, 1994, as amended; Section 335.1(A)(iv) (definition of solid waste) Section 335.431(c), effective November 15, 2001.
14. Land Disposal Phase IV—Hazardous Soils Treatment Standards and Exclusions. (Checklist 167 B).	63 FR 28556 May 26, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; Section 335.1(A)(iv) (definition of hazardous waste), effective January 26, 1994, as amended.
15. Land Disposal Phase IV—Corrections. (Checklist 167 C).	63 FR 28556 May 26, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431(c), effective November 15, 2001 and Section 335.431, effective April 30, 2000, as amended. State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may assure a variance from an applicable treatment standard.
16. Mineral Processing Secondary Material Exclusion. (Checklist 167D).	63 FR 28556 May 26, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of solid waste), effective May 30, 2001.
17. Bevil Exclusion Revision and Clarification. (Checklist 167E).	63 FR 28556 May 26, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1(definition of solid waste)(A)(iv), effective May 30, 2001 as amended; 335.1(definition of a hazardous waste, effective January 26, 1994, as amended; 335.1(definition of solid waste), effective May 30, 2001.

Description of Federal requirement (include checklist No., if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
18. Exclusion of Recycled Wood Preserving Wastewater. (Checklist 167F).	63 FR 28556 May 26, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1 (definition of solid waste)(A)(iv), effective May 30, 2001 as amended; 335.1 (definition of a hazardous waste, effective January 26, 1994, as amended.
19. Petroleum Refining Process. (Checklist 169 & 169.1).	63 FR 42110 August 6, 1998; 63 FR 54356 October 9, 1998.	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.003; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1 (definition of hazardous waste) effective January 26, 1994, as amended, 335.1(129)(A)(iv) (definition of a solid waste), effective May 30, 2001, as amended; 335.431, effective April 30, 2000. as amended.
20. Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Administrative Stay. (Checklist 170).	63 FR 46332 August 31, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431, effective April 30, 2000.
21. Emergency Revision of Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Waste from Carbamate Production. (Checklist 171).	63 FR 47409 September 4, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431(c) effective November 15, 2001.
22. Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags. (Checklist 172).	63 FR 48124 September 9, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431, effective November 15, 2001, as amended.
23. Land Disposal Restrictions—Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088). (Checklist 173).	63 FR 51254 September 24, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.431(c), effective November 15, 2001.

Description of Federal requirement (include checklist No., if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
24. Hazardous Remediation Waste Management Requirements (HWIR—Media). (Checklist 175).	63 FR 65874 November 30, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.003 (Vernon 2001), effective September 1, 1991, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; Sections 335.1 (definition of staging pile), and 335.111(a), effective November 15, 2001; 335.431, effective November 15, 2001; and 335.152(a)(14), effective November 18, 2001.
25. Universal Waste Rule—Technical Amendments. (Checklist 176).	63 FR 71225 December 24, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.261(b)(16)(D), effective April 30, 2000; Section 335.251, effective October 19, 1998.
26. Organic Air Emission Standards: Clarification and Technical Amendments. (Checklist 177).	64 FR 3382 January 21, 1999	Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.69(a)(1)(A)–(B) effective March 18, 2001; 335.152(a)(17), (19), and (21), effective November 18, 2001.
27. Petroleum Refining Process Wastes—Leachate Exemption. (Checklist 178).	64 FR 6806 February 11, 1999	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.003 (Vernon 2001), September 1, 1991, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994 as amended.
28. Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards. (Checklist 179).	64 FR 25408 May 11, 1999	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.003 (Vernon 2001), effective September 1, 1991, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; Section 335.1 (definition of a hazardous waste), effective January 26, 1994, (definition of solid waste), effective May 30, 2001; Section 335.431(c), effective November 15, 2001; and Section 335.69(f)(4)(C), effective March 18, 2001.
29. Guideline for Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the Clean Water Act and Resource Conservation and Recovery Act. (Checklist 180).	64 FR 26315 June 14, 1999	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.31, effective November 15, 2001.

Description of Federal requirement (include checklist No., if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
30. Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps. (Checklist 181).	64 FR 36466 July 6, 1999	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of universal waste), effective May 30, 2001; Section 335.2(1), effective April 30, 2000; Section 335.41(j), effective April 12, 2001; Section 335.151(b), effective February 22, 1994; Sections 335.261(a)–(b), effective April 30, 2000; and Section 335.431(b)(3), effective November 15, 2001.
31. NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, Miscellaneous Units, and Secondary Lead Smelters; Clarification of BIF Requirements Technical Correction to Fast-track Rule (MACT Rule). (Checklists 182 & 182.1).	64 FR 52827 September 30, 1999; 64 FR 63209 November 19, 1999.	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1(129)(A)(iv) (definition of solid waste), effective November 15, 2001; 335.152(a)(13), 335.112(a)(14), effective November 18, 2001; November 19, Section 305.50(4)(A), effective March 21, 2001; Section 305.175, effective November 15, 2001; Section 335.152(a)(14), effective November 18, 2001; Sections 305.69(i), effective November 15, 2001; Sections 335.1 (definitions), 335.221(a), 335.221(a)(1), 305.50(4)(A), 305.571(b), and 335.222(a)(c), effective November 15, 2001.
32. Land Disposal Restrictions Phase IV—Technical Corrections. (Checklist 183).	64 FR 56469 October 20, 1999	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; Section 335.431(c) effective November 15, 2001.
33. Waste Water Treatment Sludges from Metal Finishing Industry; 180-day Accumulation time. (Checklist 184).	65 FR 12378 March 8, 2000	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.69(j)–(l) effective March 18, 2001.
34. Organobromine Production Waste. (Checklist 185).	65 FR 14472 March 17, 2000	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Section 335.69(j)–(l) effective March 18, 2001.
35. Hazardous Waste Combustors Revised Standards. (Checklist 168).	63 FR 33782 June 19, 1998	Texas Water Code Annotated Section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.017 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code Sections 335.1 (definition of solid waste) (A)(iv), effective May 30, 2001; Sections 305.69(i), 305.69(k), effective April 12, 2001; 305.51(a)(8), effective December 5, 1999.

G. What Is the Relationship Between the Resource Conservation and Recovery Act and the Hazardous Waste Combustor MACT? How Does This Affect Delegation of This Standard to TCEQ's Authorization?

In this authorization document, the State of Texas is also seeking authorization for the Hazardous Waste Combustors Revised Standards (Checklist 168). On September 30, 1999, EPA finalized the National Emission Standards for Hazardous Air Pollutants (NESHAP) for three categories waste combustors (HWCs): incinerators, cement kilns, and light-weight aggregate kilns (64 FR 52828). The EPA promulgated this rule under joint authority of the Clean Air Act (CAA) and (RCRA). Before this rule went into effect, the air emissions from these three types of HWCs were primarily regulated under the authority of RCRA (see 40 CFR parts 264, 265, 266, and 270). However, with the release of the final HWC NESHAP (see 40 CFR part 63, subpart EEE), the air emissions from these sources are now regulated under RCRA and CAA. Even though both statutes, give EPA the authority to regulate these emissions, EPA has determined that having emissions standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, EPA deferred the RCRA requirements for HWC emission controls to the CAA requirements of 40 CFR part 63, subpart EEE.

Therefore, with today's authorization of the State of Texas for the RCRA provisions of the September 30, 1999, HWC NESHAP rule, the RCRA waste management standards for air emissions from these units will no longer apply after the facility has demonstrated compliance with 40 CFR part 63, subpart EEE. One notable exception concerns section 3005(c)(3) of RCRA, which requires that each RCRA permit contain terms and conditions necessary to protect human health and the environment. Under this provision of RCRA, if a regulatory authority determines that more stringent conditions than the HWC NESHAP are necessary to protect human health and the environment for a particular facility, then the regulatory authority may impose those conditions in the facility's RCRA permit. (See the HWC MACT rule preamble discussion on the interrelationship of the MACT rule with the RCRA Omnibus provision and site specific risk assessment at 64 FR 52828, pages 52839–52843, September 30, 1999, and the RCRA Site-Specific Risk

Assessment Policy for Hazardous Waste Combustion Facilities, dated June, 2000, for more information.

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

The EPA considers the following State requirements to be more stringent than the Federal rules: The State law is more stringent than the Federal rule because the State does not have provisions equivalent to 40 CFR 268.44(a)(10) regarding tolling agreements. The State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may approve a variance from an applicable treatment standard. In this authorization, there are no broader in scope provisions. Broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them.

I. Who Handles Permits After the Authorization Takes Effect?

The State of Texas will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. Upon authorization of the State program, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the State is receiving authorization. EPA will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which State of Texas is not yet authorized.

J. How Does Today's Action Affect Indian Country in Texas?

Texas is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

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

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

M. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This 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 in 40 CFR Part 271

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

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

Dated: May 25, 2005.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 05-11663 Filed 6-13-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7922-6]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Surface Soils of the South Tacoma Field (STF) Operable Unit of Commencement Bay—South Tacoma Channel Superfund Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 10 announces the deletion of the surface soils at the South Tacoma Field Operable Unit of the South Tacoma Channel Superfund Site (the Site) from the National Priorities List (NPL). The NPL is defined in 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 of 1980 (CERCLA), as amended. This partial deletion pertains to the South Tacoma Field soils portion of the Site. This partial deletion does not pertain to the groundwater portion of the South Tacoma Field or to other operable units of the South Tacoma Channel Site. EPA and the State of Washington have determined that the Site poses no significant threat to public health or the environment. All appropriate response actions for soils have been implemented, therefore, no further remedial measures pursuant to CERCLA are appropriate. Partial deletion of STF soils from the NPL will not affect the status of STF soils on any Washington Department of Ecology (Ecology) lists and does not preclude Ecology from conducting future investigations or requiring response under State law on any portion of the Site.

EFFECTIVE DATE: June 14, 2005.

FOR FURTHER INFORMATION CONTACT: Kris Flint, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, ECL-111, Seattle, Washington 98101, (206) 553-8155.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Surface Soils of the South Tacoma Field Operable Unit of the Commencement Bay-South Tacoma Channel. A Notice of Intent to Delete for this Site was published in the **Federal Register** on April 11, 2005 (70 FR 18347). The closing date for comments was May 11, 2005. One public comment was received expressing general support of the proposed decision and does not require a responsiveness summary. Also during the public comment period, EPA received written concurrence on the proposed decision from the Agency for Toxic Substances and Disease Registry (ATSDR).

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial action in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 31, 2005.

Julie Hagensen,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, part 300 title 40 of Chapter 1 of the CFR, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., P.351; E.O. 12580.52 FR 2923.3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by adding a "P" in the Notes column for the entry "Commencement Bay, South Tacoma Channel," in WA.

[FR Doc. 05-11467 Filed 6-13-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7923-7]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Naval Magazine Indian Island Superfund Site, Port Hadlock from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces the deletion of the Naval Magazine Indian Island Superfund Site, Port Hadlock, Washington, from the National Priorities List (NPL). The NPL is defined in 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 of 1980 (CERCLA), as amended. EPA and the State of Washington have determined that the Site poses no significant threat to public health or the environment. All appropriate response

actions have been implemented, therefore, no further remedial measures pursuant to CERCLA are appropriate.

DATES: *Effective Date:* June 14, 2005.

FOR FURTHER INFORMATION CONTACT:

Nancy Harney, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, ECL-111, Seattle, Washington 98101, (206) 553-6635.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Naval Magazine Indian Island, Port Hadlock, Washington. A Notice of Intent to Delete for this Site was published in the **Federal Register** on April 15, 2005 (70 FR 19915). The closing date for comments was May 16, 2005. No comments were received therefore, EPA has not prepared a Responsiveness Summary.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for remedial actions in the unlikely that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 31, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, part 300 title 40 of Chapter 1 of the CFR, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923.3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 2 of Appendix B to part 300 is amended by removing the entry for the “Port Hadlock Detachment (USNAVY)”. [FR Doc. 05–11720 Filed 6–13–05; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, 175, 176, 178 and 180

[Docket No. PHMSA–04–17036 (HM–215G)]

RIN 2137–AD92

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization’s Technical Instructions; Correction; Final Rule

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

ACTION: Final rule.

SUMMARY: On December 20, 2004, the Research and Special Programs Administration (RSPA)—the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA)—published a final rule under Docket Number RSPA–04–17036 (HM–215G) amending the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these revisions are necessary to facilitate the transport of hazardous materials in international commerce. This final rule corrects errors in the December 20, 2004 final rule.

DATES: *Effective Date:* The effective date of these amendments is June 14, 2005.

Delayed Compliance Date: Unless otherwise specified, compliance with the amendments adopted in this final rule is required beginning January 1, 2006.

FOR FURTHER INFORMATION CONTACT:

Charles Betts, Office of Hazardous Materials Standards, telephone (202) 366–8553, or Shane Kelley, International Standards, telephone (202) 366–0656, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On December 20, 2004, the Research and Special Programs Administration (RSPA)—the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA, we)—published a final rule under Docket HM–215G (69 FR 76044) revising the HMR to maintain alignment with recent changes corresponding provisions in international standards. Changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) necessitated amendments to domestic regulations to provide consistency and facilitate the transport of hazardous materials in international commerce. This final rule corrects various errors made during the development of the December 20, 2004 final rule and printing process. Because the amendments adopted herein impose no new regulatory burden on any person, these amendments are being made effective without the usual 30-day delay following publication.

II. Corrections and Revisions

Part 172

Section 172.101 The Hazardous Materials Table (HMT)

We are correcting entries in the HMT as follows:

- The entry “Adhesives, *containing a flammable liquid*,” UN1133, PG I is revised by correcting the Column (8C) Bulk Packaging entry “143” to read “243.”
- The entry “Aerosols, corrosive, Packing Group II or III, (each not exceeding 1 L capacity),” UN1950, is revised by correcting the Column (7) Special provisions to remove “153.”
- The entry “Aerosols, flammable, (each not exceeding 1 L capacity),” UN1950, is revised by correcting the Column (7) Special provisions to remove “153.”
- The entry “Aerosols, flammable, n.o.s. (engine starting fluid) (each not exceeding 1 L capacity),” UN1950, is revised by correcting the Column (7) Special provisions to remove “153.”
- The entry “Aerosols, non-flammable, (each not exceeding 1 L capacity),” UN1950, is revised by correcting the Column (7) Special provisions to remove “153.”
- The entry “Aerosols, poison, each not exceeding 1 L capacity,” UN1950, is

revised by correcting the Column (7) Special provisions to remove "153."

- The entry "Alcohols, flammable, toxic, n.o.s.," UN1986 is revised by correcting the Column (8A) Packaging Exceptions entry "None" to read "150."

- The entry "Alkaloids, solid, n.o.s. [or] Alkaloid salts, solid, n.o.s. [poisonous]," UN1544 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read "Alkaloids, solid, n.o.s. or Alkaloid salts, solid, n.o.s. poisonous." The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Aluminium alkyl halides, solid," UN3641 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read "Aluminum alkyl halides, solid." The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Ammonium nitrate emulsion or Ammonium nitrate suspension or Ammonium nitrate gel, intermediate for blasting explosives," UN3375 is revised by correcting the Column (6) Label Codes to add "5.1."

- The entry "5-tert-Butyl-2,4,6-trinitro-m-xylene or Musk xylene," UN2956 is revised by correcting the Column (10B) Vessel stowage, Other entry "D12" to read "12."

- The entry "Calcium arsenate," UN1573 is revised by correcting the Column (8A) Packaging Exceptions entry "152" to read "153."

- The entry "Calcium arsenate and calcium arsenite, mixtures, solid," UN1574 is revised by correcting Column (8A) Packaging Exceptions entry "152" to read "153."

- The entry "Cartridges power device (used to project fastening devices)," is revised by placing the entry in the correct alphabetical order in the HMT. The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Chlorate and magnesium chloride mixture, solid," UN1459 is revised by placing the Packing Group III entry immediately following the Packing Group II entry. The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Chloroacetonitrile," UN2668 is revised by correcting Column (7) Special provisions entry "IB99" to read "IB9."

- The entry "Chloroacetophenone, liquid CN," UN3416 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read "Chloroacetophenone, liquid CN." The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Chloroacetophenone, solid (CN)," UN1697 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read "Chloroacetophenone, solid CN." The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Chlorodinitro-benzenes, solid," UN3441 is revised by correcting the Column (1) Symbols to add "+." In addition, the Column (2) Hazardous materials description and proper shipping name entry is corrected to read "Chlorodinitrobenzenes, solid. The correction appears as a "Remove/Add" in this rulemaking.

- The packing group I entry "Corrosive liquids, toxic, n.o.s.," UN2922 is revised by correcting the Column (7) Special provisions entries "A7, A6" to read "A6, A7."

- The entry "Cyclotrimethylenenitramine and octogen, mixtures, wetted or desensitized *see* RDX and HMX mixtures, wetted or desensitized *etc.*," by correcting the Column (2) Hazardous materials description and proper shipping name to read "Cyclotrimethylenenitramine and oxygen mixtures, wetted or desensitized *see* RDX and HMX mixtures, wetted or desensitized *etc.*" The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Cyclotrimethylenenitramine and HMX mixtures, wetted or desensitized *see* RDX and HMX mixtures, wetted or desensitized *etc.*," is revised by placing the entry in the correct alphabetical order in the HMT. The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Detonators, non-electric, for blasting," UN0455 is revised by correcting the Column (10A) Vessel stowage, Location entry "5" to read "05."

- The entry "2-Dimethylaminoacetonitrile," UN2378 is revised by correcting the Column (10B) Vessel stowage, Other entry "52, 40" to read "40, 52."

- The entry "Dinitrotoluenes, molten," UN1600 is revised by placing the entry in the correct alphabetical order in the HMT. The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Dinitrotoluenes, solid," UN3454 is revised by placing the entry in the correct alphabetical order in the HMT. The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Diphenyl-chloroarsine, solid," by correcting the Column (2) Hazardous materials description and

proper shipping name to read "Diphenylchloroarsine, solid." The correction appears as a "Remove/Add" in this rulemaking.

- The entry "N-Ethylbenzyltoluidines, solid," UN3460 is revised by placing the entry in the correct alphabetical order in the HMT. The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Explosive, blasting, type A," UN0081 is revised by correcting the Column (10B) Vessel stowage, Other entry "21E, 29E" to read "19E, 21E."

- The entry "Explosive, blasting, type B," UN0082 is revised by correcting the Column (10B) Vessel stowage, Other entry "29E" to read "19E."

- The entry "Explosive, blasting, type B or Agent blasting, Type B," UN0331 is revised by correcting the Column (10B) Vessel stowage, Other entry "29E" to read "19E."

- The entry "Explosive, blasting, type E," UN0241 is revised by correcting the Column (10B) Vessel stowage, Other entry "19E, 29E" to read "19E."

- The entry "Explosive, blasting, type E or Agent blasting, Type E," UN0332 is revised by correcting the Column (10B) Vessel stowage, Other entry "29E" to read "19E."

- The entry "Fibers, animal or Fibers, vegetable *burnt, wet or damp*," UN1372 is revised by correcting the Column (6) Label Codes to add "4.2."

- The entry "Fibers, vegetable, dry," UN3360 is revised by correcting the Column (5) PG to add "III."

- The entry "Fumigated transport vehicle or freight container *see* 173.9," is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read "Fumigated transport vehicle or freight container *see* § 173.9." The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Gasoline," UN1203 is revised by correcting Column (7) Special provisions entries "139, B33, B101, T8" to read "144, B33, T8."

- The entry "Hydrogen iodide solution, *see* Hydriodic acid solution," is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read "Hydrogen iodide solution, *see* Hydriodic acid." The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Hydrogen peroxide and peroxyacetic acid mixtures, stabilized with acids, water and not more than 5 percent peroxyacetic acid," UN3149 is revised by correcting Column (7) Special provisions entries to remove "IP5."

- The entry "Hydrogen peroxide, aqueous solutions with not less than 20

percent but not more than 40 percent hydrogen peroxide (stabilized as necessary)," UN2014 is revised by correcting Column (7) Special provisions entries to remove "IP5."

- The entry "Hydrogen peroxide, aqueous solutions with not less than 8 percent but not more than 20 percent hydrogen peroxide (stabilized as necessary)," UN2984 is revised by correcting Column (7) Special provisions entries to remove "IP5."

- The entry "Hypochlorite solutions," UN1791, PG II is revised by correcting Column (7) Special provisions entries to remove "IP5."

- The entry "Isopropyl nitrate," UN1222 is revised by correcting Column (7) Special provisions entry "IB99" to read "IB9."

- The entry "Lead perchlorate, solution," UN3408 is revised to correctly list the PG II entry before the PG III entry. The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Lithium alkyls, liquid," UN2445 is revised by correcting Column (7) Special provisions to add "173."

- The entry "Lithium alkyls, solid," UN3433 is revised by correcting Column (7) Special provisions to add "173."

- The entry "Lithium batteries, contained in equipment," UN3091 is revised by correcting Columns (9A) and (9B) Quantity limitations to read "See A102, A104" and "35 kg" respectively. In a December 15, 2004 interim final rule (69 FR 75215), we imposed a limited prohibition on offering for transportation and transportation of primary (non-rechargeable) lithium batteries and cells as cargo aboard passenger-carrying aircraft and equipment containing or packed with large primary lithium batteries. In addition, a typographical error which occurred, in Column (9B), during the printing process is corrected.

- The entry "Lithium batteries packed with equipment," UN3091 is revised by correcting Column (9A) Quantity limitations to read "See A101, A103." In a December 15, 2004 interim final rule (69 FR 75215), we imposed a limited prohibition on offering for transportation and transportation of primary (non-rechargeable) lithium batteries and cells as cargo aboard passenger-carrying aircraft and equipment containing or packed with large primary lithium batteries.

- The entry "Lithium battery," UN3090 is revised by correcting Column (9A) Quantity limitations to read "See A100." In a December 15, 2004 interim final rule (69 FR 75215), we imposed a limited prohibition on offering for transportation and transportation of primary (non-rechargeable) lithium

batteries and cells as cargo aboard passenger-carrying aircraft and equipment containing or packed with large primary lithium batteries.

- The entry "Magnesium diphenyl," UN2005 is revised by correcting Column (7) Special provisions to add "173."

- The entry "2-Methylbutanal," UN3371 is revised by correcting Column (6) Label Codes to add "3." In addition, Column (7) Special provisions was revised by correcting the entry "3IB2" to read "IB2."

- The entry "Methyl mercaptopropionaldehyde, see Thia-4-pentanal," is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read "Methyl mercaptopropionaldehyde, see 4-Thiapentanal." The correction appears as a "Remove/Add" in this rulemaking.

- The entry "beta-Naphthylamine," UN1650 is removed. New proper shipping names "beta-Naphthylamine, solid" and "beta-Naphthylamine, solution" were added (69 FR 76115).

- The entries for "Nitriles, toxic, liquid, n.o.s.," UN3276, PG I, II and III are revised to correctly list the entries in accordance with their packing groups. The correction appears as a "Remove/Add" in this rulemaking.

- The entries for "Nitriles, toxic, solid, n.o.s.," UN3439, PG I, II, and III are revised to correctly list the entries in accordance with their packing groups. The correction appears as a "Remove/Add" in this rulemaking.

- The entries "Nitrocresols, solid," UN2446 and "Nitrocresols, liquid," UN3434 are revised by correcting the Column (2) Hazardous materials description and proper shipping name to correctly list these entries in alphabetical order. The correction appears as a "Remove/Add" in this rulemaking.

- The entry "Nitrogen peroxide, see Dinitrogen tetroxide," is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read "Nitrogen peroxide, see, Dinitrogen tetroxide." The correction appears as a "Remove/Add" in this rulemaking.

- The entry "4-Nitrophenylhydrazine, with not less than 30% water, by mass," UN3376 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to correctly list this entry in alphabetical order. The correction appears as a "Remove/Add" in this rulemaking.

- The entry "2,5-Norbornadiene, stabilized, see Bicyclo 2,2,1 hepta-2,5-diene, stabilized," is revised by correcting the Column (2) Hazardous

materials description and proper shipping name to read "2,5-Norbornadiene, stabilized, see Bicyclo 2,2,1 hepta-2,5-diene, stabilized," and to correctly list this entry in alphabetical order. This correction appears as a "Remove/Add" in this rulemaking.

- The entry "Organoarsenic compound, liquid, n.o.s.," UN3280, PG I, Columns (9A) and (9B) are revised to read "1 L and 30 L," respectively. The typographical errors in the two quantity limitations occurred during the printing process.

- The entry "Organoarsenic compound, liquid, n.o.s.," UN3280, PG II, Columns (9A) and (9B) are revised to read "5 L and 60 L," respectively. The typographical errors in the two quantity limitations occurred during the printing process.

- The entry "Organoarsenic compound, liquid, n.o.s.," UN3280, PG III, Columns (9A) and (9B) are revised to read "60 L and 220 L," respectively. The typographical errors in the two quantity limitations occurred during the printing process.

- The entry "Organometallic compound, toxic, liquid, n.o.s.," UN3282, PG I, Columns (9A) and (9B) are revised to read "1 L and 30 L," respectively. The typographical errors in the two quantity limitations occurred during the printing process.

- The entry "Organometallic compound, toxic, liquid, n.o.s.," UN3282, PG II, Columns (9A) and (9B) are revised to read "5 L and 60 L," respectively. The typographical errors in the two quantity limitations occurred during the printing process.

- The entry "Organometallic compound, toxic, liquid, n.o.s.," UN3282, PG III, Columns (9A) and (9B) are revised to read "60 L and 220 L," respectively. The typographical errors in the two quantity limitations occurred during the printing process.

- The entry "Organometallic substance, liquid, water-reactive," UN3398, PG I, is revised by correcting the Column (9B) Quantity limitations entry "Forbidden" to read "1 L."

- The entry "Organometallic substance, liquid, water-reactive, flammable," UN3399, PG I, is revised by correcting the Column (9B) Quantity limitations entry "Forbidden" to read "1 L."

- The entry "Organometallic substance, liquid, water-reactive, flammable," UN3399, PG II, is revised by correcting the Column (7) Special provisions to add "IP2" and correcting the Columns (9A) and (9B) Quantity limitations entry "Forbidden" to read "1 L and 5 L" respectively.

- The entry “Organometallic substance, liquid, water-reactive, flammable,” UN3399, PG III, is revised by correcting the Column (7) Special provisions to add “IP4” and correcting the Columns (9A) and (9B) Quantity limitations entry “Forbidden” to read “5 L and 60 L” respectively.

- The entries “Phenyl urea pesticides, liquid, toxic,” UN3002, PG I, II and III are added to the HMT respectively. The entries were inadvertently removed during the printing process.

- The entry “Phosphorus,” UN2198 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read “Phosphorus Pentafluoride.” The correction appears as a “Remove/Add” in this rulemaking.

- The entry “*Potassium metal, liquid alloy, see Alkali metal alloys, liquid, n.o.s.,*” is removed. New proper shipping names “Potassium metal alloys, liquid” and “Potassium metal alloys, solid” were added (69 FR 76129).

- The entries “Potassium sodium alloys, solid,” UN3404 and “Potassium sodium alloys, liquid,” UN1442 are revised by correcting the Column (2) Hazardous materials description and proper shipping name to correctly list these entries in alphabetical order. The correction appears as a “Remove/Add” in this rulemaking.

- The entry “n-Propyl nitrate,” UN1865 is revised by correcting Column (7) Special provisions entry “IB99” to read “IB9.”

- An erroneous entry immediately following the entry “Receptacles, small, containing gas (gas cartridges) *non-flammable, without release device, not refillable and not exceeding 1 L capacity,*” UN2037 is removed. The correction appears as a “Remove/Add” in this rulemaking.

- The entry “Refrigerating machines, containing *non-flammable, non-toxic, or ammonia solution (UN2672),*” UN2857 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read “Refrigerating machines, containing *non-flammable, non-toxic gases, or ammonia solutions (UN2672),*” The correction appears as a “Remove/Add” in this rulemaking.

- The entries for “Rubber solution,” UN1287, PG II, and III to correctly list the entries in accordance with their packing groups. The correction appears as a “Remove/Add” in this rulemaking.

- The entry for “Samples, explosive, other than initiating explosives,” UN1090, is added to the HMT. The entry was inadvertently removed during the printing process.

- The entries for “Selenium compound, liquid, n.o.s.,” UN3440, PG I, II and III are revised to correctly list the entries in accordance with their packing groups. The correction appears as a “Remove/Add” in this rulemaking.

- The entries for “Selenium compound, solid, n.o.s.,” UN3283, PG I, II, and III are revised to correctly list the entries in accordance with their packing groups. The correction appears as a “Remove/Add” in this rulemaking.

- The entry “Self-reactive liquid type F,” UN3229 is revised by correcting Column (7) Special provisions to remove “T23.”

- The entry “Sulfur,” NA1350 is revised by correcting Column (7) Special provisions entry “10” to read “30.”

- The entry “Sulfur, molten,” UN2448 is revised by correcting the Column (10B) Vessel stowage, Other entry “61” to read “74.”

- The entry “Sulfuric acid, fuming with less than 30 percent free sulfur trioxide,” UN1831 is revised by correcting Column (7) Special provisions entry “B84, N34, T20, TP2, TP12, TP13” to read “A3, A7, B84, N34, T20, TP2, TP12, TP13.”

- The entry “Sulfuric acid, fuming with 30 percent or more free sulfur trioxide,” UN1831 is revised by correcting Column (7) Special provisions entry “2, A3, A6, A7, B9, B14, B32, B74, B77, B84, N34, T20, TP2, TP12, TP13” to read “2, B9, B14, B32, B74, B77, B84, N34, T20, TP2, TP12, TP13.”

- The entry “Toxic by inhalation liquid, n.o.s. with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 LC₅₀,” UN3382 is revised by correcting and typographical error in Column (2) and correcting Column (7) Special provisions entry “2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP4527, TP38, TP4513” to read “2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45.” The correction appears as a “Remove/Add” in this rulemaking.

- The entry “Toxins, extracted from living sources, solid, n.o.s.,” UN3462 is revised by correcting Column (1) Symbols to add “G.”

- The entries “1,1,1-Trifluoroethane or Refrigerant gas, R 143a,” UN2035 and “Trifluoromethane, refrigerated liquid,” UN3136 are revised by correcting the Column (2) Hazardous materials description and proper shipping name to correctly list these entries in alphabetical order. The correction appears as a “Remove/Add” in this rulemaking.

- The entry “Trinitrobenzene (picryl chloride), wetted, with not less than 10% water by mass,” UN3365 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read “Trinitrochlorobenzene (picryl chloride), wetted, with not less than 10% water by mass.” The correction appears as a “Remove/Add” in this rulemaking.

Section 172.102

We are correcting entries in the Special Provisions as follows:

- In paragraph (c)(1), Special Provision 173 is added. In the final rule we adopted an array of new generic UN entries for organometallic substances to harmonize with the UN Recommendations. These new generic entries are intended to be used for all organometallic substances, with all existing generic entries covering these substances being deleted. Consistent with the UN Recommendations, the final rule removed certain existing generic entries covering these materials, while certain entries for these materials were temporarily retained. The entries concerned are UN1366, UN1370, UN2005, UN2445, UN3051, UN3052, UN3076, UN3433 and UN3461. In the final rule, we included a statement in the preamble (69 FR 76048) stating our intent to remove these entries effective January 1, 2007.

However, in the UN Recommendations, Special Provision 320 was added to each of the affected entries scheduled for removal in 2007 that allows the appropriate new generic organometallic substances entry to be used in place of the technical name entry irrespective of the requirements in 2.0.2.2 of the UN Recommendations (which would otherwise require use of the technical name entry). The final rule, in error, failed to adopt a similar provision to that in UN Special Provision 320. Consequently, § 172.101(c)(12)(ii) would appear to preclude use of the new generic entries until such time the technical name entries are removed from the Hazardous Materials Table. Therefore, we are correcting this inconsistency by adding to the affected entries a Special Provision 173 stating that “An appropriate generic entry may be used.”

- In paragraph (c)(3), in Special Provision B69, we are correcting the last sentence by adding the word “be” after the word “must” and before the word “approved.” During the printing process the word “be” was inadvertently omitted.

- In paragraph (c)(4), in the “Table 1—IB Codes,” in the first column, under

the heading "IBC Code," the wording "B2" is corrected to read "IB2." The typographical error occurred during the printing process.

- In paragraph (c)(4), in the "Table 1—IB Codes," in the second column, under the heading "Authorized IBCs," in the Additional Requirement entry for "IB3," the reference to "Table 3" is corrected to read "Table 2." The typographical error occurred during the printing process.

- In paragraph (c)(7), in the "Table of Portable Tank T Codes T1–T22," in the fifth column, the first entry "\$ 178.275(d)(2)" is corrected to read "\$ 178.275(d)(2)." The typographical error occurred during the printing process.

- In paragraph (c)(8), in portable tank special provision "TP3," the formula is corrected by revising "dr" and "df" to read "d_r" and "d_f." The typographical error occurred during the printing process.

Section 172.202

In paragraph (a)(5)(i), in the first sentence, the wording "For Class I materials" is corrected to read "For Class 1 materials". The typographical error occurred during the printing process.

Section 172.203

Paragraph (m)(2) is revised to clarify that the phrase "Poison-Inhalation Hazard" or "Toxic Inhalation Hazard" need not be added to the shipping description if the words "Poison Inhalation" or "Toxic Inhalation" otherwise appear in the shipping description.

Part 173

Section 173.3

In the December 20, 2004 final rule, we revised the requirements for use of salvage drums to include the term "non-conforming." The term "non-conforming" was added to the UN Model Regulations by the UN Committee of Experts in 2000. Our intent in the final rule was to allow the use of salvage drums for non-conforming packages, but to limit such use to instances where the packages were discovered to be non-conforming after having been placed in transportation. However, we inadvertently applied the limitation to damaged, defective, and leaking packages as well as to non-conforming packages. We are therefore revising 173.3(c) to clarify that damaged, defective, or leaking packages may be transported in salvage drums under the specified conditions irrespective of

whether such packages are discovered before or after having been placed in transportation. This would allow, for example, a package found leaking at a fixed storage facility to be transported in a salvage drum for purposes of recovery or disposal.

Section 173.25

In § 173.25, paragraph (a)(4) is revised to clarify that overpacks marked with an indication that inner containers comply with prescribed specification may be used to satisfy the "OVERPACK" marking until October 1, 2007. The "inner container comply with prescribed specifications" marking remains in effect for cylinders or containers packaged in a strong non-bulk outer packaging that are specifically required elsewhere in this part to be marked in this manner.

Section 173.115

In § 173.115, we are making the following corrections:

- In paragraph (a)(2), the last sentence is corrected to reference "\$ 173.115(k)" regarding the flammability tests for aerosols.

- In paragraph (k)(3), a grandfather provision that would authorize an aerosol that was tested prior to January 1, 2006 in accordance with the requirements in effect on December 31, 2005 is not required to be retested.

The wording was inadvertently omitted.

Section 173.151

In § 173.151, in paragraph (c), in the first sentence, the wording "171.8" is corrected to read "\$ 171.8." The typographical error occurred during the printing process.

Section 173.185

In § 173.185, in paragraph (e)(6), in the second sentence, the wording "of a design type" is added after the word "battery" and before the word "which." The wording was inadvertently omitted during the printing process.

Section 173.212

In § 173.212, in paragraph (c), the entry "Glass, porcelain or stoneware in steel, aluminum, wooden or fiberboard box: 6PA2, 6PB1, 6PC or 6PG2" is corrected to read "Glass, porcelain or stoneware in steel, aluminum, wooden or fiberboard box: 6PA2, 6PB2, 6PC or 6PG2." A typographical error occurred during the printing process.

Section 173.213

In § 173.213, in paragraph (c), the entry "Glass, porcelain or stoneware in steel, aluminum, wooden or fiberboard

box: 6PA2, 6PB1, 6PC or 6PG2" is corrected to read "Glass, porcelain or stoneware in steel, aluminum, wooden or fiberboard box: 6PA2, 6PB2, 6PC or 6PG2." A typographical error occurred during the printing process.

Section 173.220

In § 173.220, we are making the following corrections:

- In paragraph (a)(3), the reference to paragraph "(d)(1)" is corrected to read "(e)(1)."

- In paragraph (g), the reference to paragraph "(d)(2)" is corrected to read "(e)(2)."

These typographical errors occurred during the printing process.

Section 173.225

In § 173.225, we are making the following corrections:

- In paragraph (c)(8), in the "Organic Peroxide Table," for the entry "Dicumyl peroxide, UN3110, the number "9" is added to "column 8."

- In paragraph (c)(8), in the "Organic Peroxide Table," under "Notes," Note 12 is corrected by revising the reference to "paragraph (c)(2)" to read "paragraph (b)(2)." In paragraph (g), in the "Organic Peroxide Portable Tank Table," for the entry "ORGANIC PEROXIDE, TYPE F, LIQUID, UN3109," the word "than" is added immediately after the word "more" and before the wording "72%" for the entries "Isopropyl cumyl hydroperoxide, not more 72% in diluent type A" and "p-Menthyl hydroperoxide, not more 72% in diluent type A," respectively.

- Paragraph (h)(3)(xii) is revised specify that DOT 57 metal portable tanks are authorized for those materials that are provided with a reference to Note 9 in Column 8 of the Organic Peroxide Table and that when authorized these tanks must conform to the venting requirements specified in § 173.225(f). In the NPRM, we proposed to remove "Note 9." However, as a result of comments received on the NPRM that proposal was not adopted.

- In the December 20, 2004 final rule, we added Note 29 to the notes following the Organic Peroxide Table. The note was used to identify materials which are found in the HMR, but not included in the UN Model Regulations, IMDG Code, and the ICAO Technical Instructions and to indicate that a Competent Authority approval is required for international transportation. However, it is not our policy to require approvals for organic peroxide formulations listed in the HMR but not in the international regulations. Therefore, Note 29 is being removed. However, in accordance with §§ 171.11(d)(17), 171.12(b)(20), and

171.12a(b)(18) a Competent Authority approval, issued by the Associate Administrator, is still required for shipments of organic peroxides which are not identified by technical name in the Organic Peroxide Table (also see § 173.128(d)).

Section 173.227

In § 173.227, paragraph (b)(1) is being reinstated. This paragraph was inadvertently omitted during the printing process.

Section 173.313

In § 173.313, in the “UN Portable Tank Table for Liquefied Compressed Gases,” the following corrections are made:

- Immediately following the entry “Methyl chloride and methylene chloride mixture, UN1912,” in the first and second columns respectively, the wording “1954” and “n.o.s.” are removed. In addition, in the sixth column the wording “0.81194” is corrected to read “0.81.”
- Immediately following the entry “Insecticide gases, flammable,” in the first and second columns, the wording “1954” and “n.o.s.” are added respectively. These typographical errors occurred during the printing process.

Part 175

Section 175.30

In § 175.30, paragraph (a)(5) is removed. Paragraph (a)(5) required hazardous materials being accepted for transportation aboard an aircraft to be marked with the air eligibility marking in accordance with § 172.321. In the final rule (69 FR 76154), we removed the requirement for shippers to mark packages acceptable for air transport with the air eligibility marking.

Part 176

Section 176.83

In § 176.83, in paragraph (l)(3), in the “Segregation of Cargo Transport Units on Board Hatchless Container Ships,” the following corrections are made:

- For the entry “Away from,” the first word in the tenth and eleventh columns are corrected to read “One.”
- For the entry “Separated by a complete compartment or hold from,” in the tenth column, in the second sentence, the word “Tree” is corrected to read “Three.” The typographical errors occurred during the printing process.

Part 178

Section 178.274

In § 178.274, in paragraph (f)(1)(v), the wording “(IBR, see § 171.1 of this

subchapter)” is corrected to read “(IBR, see § 171.7 of this subchapter).” The typographical error occurred during the printing process.

Part 180

Section 180.352

In the final rule, we added a new paragraph (d)(1)(v) authorizing retests and inspections performed under paragraphs (d)(1)(i) and (d)(1)(ii) of this section to be used to satisfy the tests and inspections required of paragraph (b) of this section. However, an editorial error occurred during the printing process that caused the text in new paragraph (d)(1)(v) to be repeated in paragraph (d)(1)(iv). Additionally, the editorial error in paragraph (d)(1)(iv) created an incorrect lead-in to subparagraphs (A) and (B) that follow. The original intent of this change was to keep the “repair” and “routine maintenance” requirements in this section separate. Therefore, we are revising paragraph (d)(1)(iv) to correct this editorial error.

III. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule corrects various errors made during the development of the December 20, 2004 final rule and printing process. To this end, as discussed in detail earlier in this preamble, the December 20, 2004 final rule amended the HMR to more fully align it with the biennial updates of the UN Recommendations, the IMDG Code and the ICAO Technical Instructions to facilitate the transport of hazardous materials in international commerce.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This final rule corrects various errors made during the development of the December 20, 2004 final rule and printing process. To this end, as discussed in detail earlier in this preamble, the December 20, 2004 final rule incorporates changes into the HMR based on the Thirteenth Revised Edition of the UN Recommendation, Amendment 32 to the IMDG Code, and the 2005–2006 ICAO Technical Instructions, which became effective January 1, 2005. The continually

increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible. Harmonization serves to facilitate international transportation; at the same time, harmonization ensures the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to align the HMR with international standards, we review and consider each amendment on its own merit based on its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. Thus, as discussed in detail in the preamble of the December 20, 2004 final rule, there were several instances where we elected not to adopt a specific provision of the UN Recommendations, the IMDG Code or the ICAO Technical Instructions; further, we are maintaining a number of current exceptions for domestic transportation that should minimize the compliance burden on the regulated community.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is a non-significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the December 20, 2004 final rule. The Regulatory Evaluation is available for review in the public docket for this rulemaking.

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, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various

levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material 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 materials; and

(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), (2), (3), and (5) above and preempts State, local, and Indian tribe requirements not meeting the “substantively the same” standard. This final rule is necessary to incorporate changes adopted in international standards, effective January 1, 2005. If the changes in this final rule are not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, are at an economic disadvantage. These companies are forced to comply with a dual system of regulations. The changes in this rulemaking are intended to avoid this result. Federal hazardous materials transportation law provides at section 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 is September 12, 2005.

D. Executive Order 13175

This final rule was 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, does not impose

substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The corrections contained in this final rule will have little or no effect on the regulated industry. Based on the assessment in the regulatory evaluation, to the December 20, 2004 final rule, I hereby certify that, while this rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Flexibility analysis is available for review in the docket.

This final rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

This final rule imposes no new information collection requirements.

G. Regulatory 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.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a

detailed statement on actions significantly affecting the quality of the human environment. In the December 20, 2004 final rule, we developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude that there are no significant environmental impacts associated with this final rule. Consistency in the regulations for the transportation of hazardous materials aids in the shipper’s understanding of what is required and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. For interested parties, an environmental assessment is available in the public docket.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

**PART 172—HAZARDOUS MATERIALS
TABLE, SPECIAL PROVISIONS,
HAZARDOUS MATERIALS
COMMUNICATIONS, EMERGENCY
RESPONSE INFORMATION, AND
TRAINING REQUIREMENTS**

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 172.101, the Hazardous Materials Table is amended by removing, adding and revising, in the appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

(1) Sym- bols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identifica- tion nos.	(5) PG	(6) Label codes	(7) Special provi- sions	(8) Packaging (§ 173. * * *)			(9) Quantity limitations		(10) Vessel stow- age	
							Excep- tions (8A)	Non- bulk (8B)	Bulk (8C)	Passenger aircraft/rail (9A)	Cargo air- craft only (9B)	Loca- tion (10A)	Other (10B)
G	[REMOVE:].												
	Alkaloids, solid, n.o.s. [or] Alkaloid salts, n.o.s. [poisonous]	6.1	* UN1544 II	I 6.1	* 6.1 IB8, IP2, IP4, T3, TP33. 6.1	* IB7, IP1, T6, TP33 153	None ... 212	* 211 242	242 25 kg	5 kg 100 kg	50 kg	A A	 A
	Aluminium alkyl halides, solid	4.2	* UN3461	I	* 4.2, 4.3	* T21, TP7, TP33	None ...	* 181	244	Forbidden	Forbidden	D	134
	beta-Naphthylamine	6.1	* UN1650	II	6.1	IB8, IP2, IP4, T3, TP33	153	* 212	242	25 kg	100 kg	A	.....
	Cartridges power device (used to project fastening devices)	ORM-D	* .....	.....	None	*	63	None	None	30 kg gross	30 kg gross	A	.....
D	Chlorate and magnesium chloride mixture solid	5.1	* UN1459	II	5.1	A9, IB8, IP2, IP4, N34, T3, TP33	152	* 212	240	5 kg	25 kg	A	56, 58
	Chlorate and magnesium chloride solid	5.1	* UN1459	III	5.1	A9, IB8, IP3, N34, T1, TP33	152	* 213	240	25 kg	100 kg	A	56, 58
	Chloroacetophenone, liquid CN	6.1	* UN3416	II	6.1	A3, IB2, N12, N32, N33, T7, TP2, TP13	None	202	243	Forbidden	60 L	D	12, 40
	Chloroacetophenone, solid (CN)	6.1	* UN1697	II	6.1	A3, IB8, IP2, IP4, N12, N32, N33, N34, T3, TP2, TP13, TP33	None	212	None	Forbidden	100 kg	D	12, 40
	Chlorodinitro-benzenes, solid	6.1	* UN3441	II	6.1	IB8, IP2, IP4, T3, TP33	153	* 212	242	25 kg	100 kg	A	91
	Cyclotrimethylenetrinitramine and octogen, mixtures, wetted or desensitized see RDX and HMX mixtures, wetted or desensitized etc.	.....	* .....	.....	.....	*	.....	*	.....	.....	.....	.....	.....
	Cyclotrimethylenetrinitramine and HMX mixtures, wetted or desensitized see RDX and HMX mixtures, wetted or desensitized etc.	.....	* .....	.....	.....	*	.....	*	.....	.....	.....	.....	.....
	Dinitrotoluenes, solid	6.1	* UN3454	II	6.1	IB8, IP2, IP4, T3, TP33	153	* 212	242	25 kg	100 kg	A	.....
	Dinitrotoluenes, molten	6.1	* UN1600	II	6.1	T7, TP3	None	202	243	Forbidden	Forbidden	C	.....
	Diphenyl-chloroarsine, solid	6.1	* UN3450	I	6.1	IB7, IP1, T6, TP33	None	* 211	242	5 kg	50 kg	A	40
	N-Ethylbenzyltoluidines, solid	6.1	* UN3460	III	6.1	IB8, IP3, T1, TP33	153	* 213	204	100 kg	200 kg	A	.....
	Fumigated transport vehicle or freight container see 173.9	.....	* .....	.....	.....	*	.....	*	.....	.....	.....	.....	.....

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Sym-bols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identifica-tion nos.	PG	Label codes	Special provi-sions	(8) Packaging (§ 173. * * *)			(9) Quantity limitations		(10) Vessel stow-age	
							Excep-tions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo air-craft only	Loca-tion	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Hydrogen iodide solution <i>see</i> Hydriodic acid, solution	*	*		*	*							
	Lead perchlorate, solution	5.1	UN3408	III	5.1, 6.1	IB2, T4, TP1	152	203	242	2.5 L	30 L	A	56, 58
	<i>Methyl mercaptopropanaldehyde, see</i> Thia-4-pentanal			II	5.1, 6.1	IB2, T4, TP1	152	202	243	1 L	5 L	A	56, 58
G	Nitriles, toxic, liquid, n.o.s.	6.1	UN3276	I	6.1	5, T14, TP2, TP13, TP27	None	201	243	1 L	30 L	B	52
G	Nitriles, toxic, solid, n.o.s.	6.1	UN3439	I	6.1	IB7, IP1, T6, TP33	None	211	242	5 kg	50 kg		52
G	Nitriles, toxic, liquid, n.o.s.	6.1	UN3276	II	6.1	IB2, T11, TP2, TP27	153	202	243	5 L	60 L	B	52
G	Nitriles, toxic, solid, n.o.s.	6.1	UN3439	II	6.1	IB8, IP2, IP4, T3, TP33	153	212	242	25 kg	100 kg	B	52
G	Nitriles, toxic, liquid, n.o.s.	6.1	UN3276	III	6.1	IB3, T7, TP1, TP28	153	203	241	60 L	220 L	A	52
G	Nitriles, toxic, solid, n.o.s.	6.1	UN3439	III	6.1	IB8, IP3, T1, TP33	153	213	240	100 kg	200 kg	A	52
	Nitrocresols, solid	6.1	UN2446	III	6.1	IB8, IP3, T1, TP33	153	213	240	100 kg	200 kg	A	
	Nitrocresols, liquid	6.1	UN3434	III	6.1	IB3, T4, TP1	153	203	241	60 L	220 L	A	
	<i>Nitrogen peroxide, see</i> Dinitrogen tetroxide		*		*	*							
	4-Nitrophenylhydrazine, with not less than 30% water, by mass	4.1	UN3376	I	4.1	164, A8, A19, A20, N41	None	211	None	Forbidden	15 kg	E	36
	2,5-Norbornadiene, stabilized, <i>see</i> Bicyclo 2,2,1 hepta-2,5-diene, stabilized		*		*	*							
	Phosphorus	2.3	UN2198		2.3.8	2, B9, B14	None	302, 304	314, 315	Forbidden	Forbidden	D	40
	Potassium metal, liquid alloy, <i>see</i> Alkali metal alloys, liquid, n.o.s.		*		*	*							
	Potassium sodium alloys, solid	4.3	UN3404	I	4.3	A19, B27, N34, N40, T9, TP7, TP33	None	211	244	Forbidden	15 kg		52
	Potassium sodium alloys, liquid	4.3	UN1422	I	4.3	A7, A19, B27, N34, N40, T9, TP3, TP7, TP31	None	201	244	Forbidden	1 L	E	40, 52
	Receptacles, small, containing gas (gas cartridges) <i>non-flammable, without release device, not refillable and not exceeding 1 L capacity.</i>	2.2	UN2037		2.2		306	304	None	1 kg	15 kg	B	40
	Refrigerating machines, containing non-flammable, non-toxic, or ammonia solution (UN 2672)	2.2	UN2857		2.2, 5.1	A14	306	304	None	1 kg	15 kg	B	40
	Rubber solution	3	UN1287	II	3	149, IB2, T4, TP1, TP8	306, 307	306	306, 307	450 kg	450 kg	A	
							150	202	242	5 L	60 L	B	

Rubber solution	*	*	*	*	III	3	*	B1, IB3, T2, TP1	*	150	203	242	60 L	220 L	A	.....
Selenium compound, solid, n.o.s.	*	*	*	*	I	6.1	*	IB7, IP1, T6, TP33	None	None	211	242	5 kg	50 kg	B	.....
Selenium compound, liquid, n.o.s.					I	6.1		T14, TP2, TP27	None	None	201	243	1 L	30 L	B	.....
Selenium compound, solid, n.o.s.					II	6.1		IB8, IP2, IP4, T3, TP33	153	153	212	242	25 kg	100 kg	B	.....
Selenium compound, liquid, n.o.s.					II	6.1		IB2, T11, TP2, TP27	153	153	202	243	5 L	60 L	B	.....
Selenium compound, solid, n.o.s.					III	6.1		IB8, IP3, T1, TP33	153	153	213	240	100 kg	200 kg	A	.....
Selenium compound, liquid, n.o.s.					III	6.1		IB3, T7, TP1, TP28	153	153	203	241	60 L	220 L	A	.....
G Toxic by inhalation liquid, n.o.s. with an inhalation toxicity lower than or equal to 1000ml/m3 and saturated vapor concentration greater than or equal to 10 LC50.	*	*	*	*	I	6.1	*	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP4527, TP38, TP4513,	None	None	227	244	Forbidden	Forbidden	D	40
1,1,1-Trifluoroethane or Refrigerant gas, R 143a	*	*	*	*	.....	2.1	*	T50	306	306	304	314, 315.	Forbidden	150 kg	B	40
Trifluoromethane, refrigerated liquid					.....	2.2		T75, TP5	306	306	None	314, 315.	50 kg	500 kg		
Trinitrobenzene (picryl chloride), wetted, with not less than 10% water by mass	*	*	*	*	I	4.1	*	162, A8, A19, N41, N84	None	None	211	None	0.5 kg	0.5 kg	E	36
[ADD]:	*	*	*	*				*			*					
Alkaloids, solid, n.o.s. or Alkaloid salts, solid, n.o.s. poisonous	*	*	*	*	I	6.1	*	IB7, IP1, T6, TP33	None	None	211	242	5 kg	50 kg	A	.....
					II	6.1		IB8, IP2, IP4, T3, TP33	153	153	212	242	25 kg	100 kg	A	.....
					III	6.1		IB8, IP3, T1, TP33	153	153	213	240	100 kg	200 kg	A	.....
Aluminum alkyl halides, solid	*	*	*	*	I	4.2, 4.23	*	173, T21, TP7, TP33	None	None	181	244	Forbidden	Forbidden	D	134
Cartridges power device (used to project fastening devices)	*	*	*	*	.....	None	*	*	63	63	None	None	30 kg gross	30 kg gross	A	.....
Chlorate and magnesium chloride mixture solid	*	*	*	*	II	5.1	*	A9, IB8, IP2, IP4, N34, T3, TP33	152	152	212	240	5 kg	25 kg	A	56, 58
					III	5.1		A9, IB8, IP3, N34, T1, TP33	152	152	213	240	25 kg	100 kg	A	56, 58
Chloroacetophenone, CN, liquid	*	*	*	*	II	6.1	*	A3, IB2, N12, N32, N33, N34, T3, TP2, TP13	None	None	202	243	Forbidden	60 L	D	12, 40
Chloroacetophenone, CN, solid					II	6.1		A3, IB8, IP2, IP4, N12, N32, N33, N34, T3, TP13, TP33	None	None	212	None	Forbidden	100 kg	D	12, 40
Chlorodinitrobenzenes, solid	*	*	*	*	II	6.1	*	IB8, IP2, IP4, T3, TP33	153	153	212	242	25 kg	100 kg	A	91
Cyclotrimethylenetrinitramine and HMX mixtures, wetted or desensitized see RDX and HMX mixtures, wetted or desensitized etc.	*	*	*	*				*			*					.....
Dinitrotoluenes, molten	*	*	*	*	II	6.1	*	T7, TP3	None	None	202	243	Forbidden	Forbidden	C	.....

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

(1) Sym- bols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identifica- tion nos.	(5) PG	(6) Label codes	(7) Special provi- sions	(8) Packaging (§ 173. * * *)			(9) Quantity limitations		(10) Vessel stow- age	
							Excep- tions	Non- bulk	Bulk	Passenger aircraft/rail	Cargo air- craft only	Loca- tion	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Dinitrotoluenes, solid	6.1	UN3454	II	6.1	IB8, IP2, IP4, T3, TP33	153	212	242	25 kg	100 kg	A	
	Diphenylchloroarsine, solid	6.1	UN3450	I	6.1	IB7, IP1, T6, TP33	None	211	242	5 kg	50 kg	D	40
	N-Ethylbenzyltoluidines, solid	*	*	III	6.1	IB8, IP3, T1, TP33	153	213	240	100 kg	200 kg	A	
	Fumigated transport vehicle or freight container <i>see</i> § 173.9	*	*			*		*					
	Hydrogen iodid solution, <i>see</i> Hydriodic acid	*	*			*		*					
	Lead perchlorate, solution	5.1	UN3408	II III	5.1, 6.1 5.1, 6.1	IB2, T4, TP1 IB2, T4, TP1	152 152	202 203	243 242	1 L 2.5 L	5 L 30 L	A A	56, 58 56, 58
	<i>Methyl mercaptopropanaldehyde, see</i> 4-Thiapentanal	*	*			*		*					
G	Nitriles, toxic, liquid, n.o.s.	6.1	UN3276	I	6.1	5, T14, TP2, TP13, TP27 IB2, T11, TP2, TP27	None	201	243	1 L	30 L	B	52
				II	6.1	IB3, T7, TP1, TP28	153	202	243	5 L	60 L	B	52
				III	6.1	IB7, IP1, T6, TP33	153	203	241	60 L	220 L	A	52
G	Nitriles, toxic, solid, n.o.s.	6.1	UN3439	I	6.1	IB7, IP1, T6, TP33	None	211	242	5 kg	50 kg	D	52
				II	6.1	IB8, IP2, IP4, T3, TP33	153	212	242	25 kg	100 kg	B	52
				III	6.1	IB8, IP3, T1, TP33	153	213	240	100 kg	200 kg	A	52
	Nitroresols, liquid	6.1	UN3434	III	6.1	IB3, T4, TP1	153	203	241	60 L	220 L	A	
	Nitroresols, solid	6.1	UN2446	III	6.1	IB8, TP3, T1, TP33	153	213	240	100 kg	200 kg	A	
	<i>Nitrogen peroxide, see</i> Dinitrogen tetroxide	*	*			*		*					
	4-Nitrophenylhydrazine, with not less than 30% water, by mass	4.1	UN3376	I	4.1	164, A8, A19, A20, N41	None	211	None	Forbidden	15 kg	E	36
	2,5-Norbornadene, stabilized, <i>see</i> Bicyclo 2,2,1 hepta-2,5-diene, stabilized	*	*			*		*					
	Phenyl urea pesticides, liquid, toxic	6.1	UN3002	I II III	6.1 6.1 6.1	T14, TP2 TP27 T7, TP2 T4, TP1	None None 153	201 202 203	243 243 241	1 L 5 L 60 L	30 L 60 L 220 L	B B A	40 40 40
	Phosphorus Pentafluoride	2.3	UN2198		2.3, 8	2, B9, B14	None	302, 304,	314, 315,	Forbidden	Forbidden	D	40
	Potassium sodium alloys, liquid	4.3	UN1422	I	4.3	A7, A19, B27, N34, N40, T9, TP3, TP7, TP31	None	201	244	Forbidden	1 L	E	40, 52

Potassium sodium alloys, solid	4.3	UN3404	I	4.3	A19, B27, N34, N40, T9, TP7, TP33	None ...	211	244	Forbidden	15 kg	D	52
Receptacles, small, containing gas (gas cartridges) <i>non-flammable, without release device, not refillable and not exceeding 1 L capacity.</i>	2.2	UN2037	.....	2.2	*	306	304	None ...	1 kg	15 kg	B	40
Refrigerating machines, containing <i>non-flammable, non-toxic gases, or ammonia solutions (UN2672).</i>	2.2	UN2857	.....	2.2	*	306, 307.	306	306, 307.	450 kg	450 kg	A	.....
Rubber solution	3	UN1287	II	3	149, IB2, T4, TP1, TP8	150	202	242	5 L	60 L	B	.....
			III	.....	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	.....
G Samples, explosive, other than initiating explosives .....	.....	UN1090	II	.....	*	None ...	62	None ...	Forbidden	Forbidden	14	12E
				.....	113	.....	.....	.....	.....	.....	.....	.....
Selenium compound, liquid, n.o.s.	6.1	UN3440	I	6.1	TP14, TP2, TP27	None ...	201	243	1 L	30 L	B	.....
			II	6.1	IB2, T11, TP2, TP27	153	202	243	5 L	60 L	B	.....
			III	6.1	IB3, T7, TP1, TP28	153	203	241	60 L	220 L	A	.....
Selenium compound, solid, n.o.s.	6.1	UN2833	I	6.1	IB7, IP1, T6, TP33	None ...	211	242	5 kg	50 kg	B	.....
			II	6.1	IB8, IP2, IP4, T3, TP33	153	212	242	25 kg	100 kg	B	.....
			III	6.1	IB8, IP3, T1, TP33	153	213	240	100 kg	200 kg	A	.....
G Toxic by inhalation liquid, n.o.s. with an inhalation toxicity lower than or equal to 1000ml/m3 and saturated vapor concentration greater than or equal to 10 LC50.	6.1	UN3382	I	6.1	2, B9, B14, B32, B74, T20, TP2, TP13, TP27, TP38, TP45	None ...	227	244	Forbidden	Forbidden	D	40
Trifluoromethane, refrigerated liquid	2.2	UN3136	.....	2.2	T75, TP5	306	None ...	314, 315.	50 kg	500 kg	D	.....
1,1,1-Trifluoroethane or Refrigerant gas, R 143a	2.1	UN2035	.....	2.1	T50	306	304	314, 315.	Forbidden	150 kg	B	40
Trinitrochlorobenzene (picryl chloride), wetted, with not less than 10% water by mass	4.1	UN3365	I	4.1	*	None ...	211	None ...	0.5 kg	0.5 kg	E	36
[REVISE]:	*	*		*	*		*					
Adhesives, containing a flammable liquid	3	UN1133	I	3	B42, T11, TP1, TP8, TP27	150	201	243	1 L	30 L	B	.....
			II	3	149, B52, IB2, T4, TP1, TP8	150	173	242	5 L	60 L	A	.....
			III	3	B1, B52, IB3, T2, TP1	150	173	242	60 L	220 L	A	.....
Aerosols, corrosive, Packing Group II or III, (each not exceeding 1 L capacity)	2.2	UN1950	.....	2.2, 8 ...	*	306	None ...	None ...	75 kg	150 kg	A	48, 87, 126
Aerosols, flammable, (each not exceeding 1 L capacity)	2.1	UN1950	.....	2.1	N82	306	None ...	None ...	75 kg	150 kg	A	48, 87, 126
Aerosols, flammable, n.o.s. (engine starting fluid) (each not exceeding 1 L capacity)	2.1	UN1950	.....	2.1	N82	306	304	None ...	Forbidden	150 kg	A	48, 87, 126
Aerosols, non-flammable, (each not exceeding 1 L capacity)	2.2	UN1950	.....	2.2 .....	.....	306	None ...	None ...	75 kg	150 kg	A	48, 87, 126
Aerosols, poison, each not exceeding 1 L capacity	2.2	UN1950	.....	2.2, 6.1	.....	306	None ...	None ...	Forbidden	Forbidden	A	48, 87, 126
G Alcohols, flammable, toxic n.o.s.	3	UN1986	I	3, 6.1 ...	T14, TP2, TP13, TP27	None ...	201	243	Forbidden	30 L	E	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Sym-bols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification nos.	PG	Label codes	Special provisions	Packaging (§ 173.* * *)			Quantity limitations		Vessel stow-age	
							Excep-tions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo air-craft only	Loca-tion	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				II	3, 6.1 ...	IB2, T11, TP2, TP27	150	202	243	1 L	60 L	B	40
				III	3, 6.1 ...	B1, IB3, T7, TP1, TP28	150	203	242	60 L	220 L	A	
	Aluminum alkyl halides, liquid	4.2	UN3052	I	4.2, 4.3	173, B9, B11, T21, TP2, TP7	None	181	244	Forbidden	Forbidden	D	134
	Aluminum alkyl hydrides	4.2	UN3076	I	4.2, 4.3	173, B9, B11, T21, TP2, TP7	None	181	244	Forbidden	Forbidden	D	
	Aluminum alkyls	4.2	UN3051	I	4.2, 4.3	173, B9, B11, T21, TP2, TP7	None	181	244	Forbidden	Forbidden	D	
	Ammonium nitrate emulsion or Ammonium nitrate suspension or Ammonium nitrate gel, intermediate for blasting explosives.	5.1	UN3375	II	5.1	147, 163	None	214	214	Forbidden	Forbidden	D	60, 66, 124
	5-tert-Butyl-2,4,6-trinitro-m-xylene or Musk xylene	4.1	UN2956	III	4.1	159	None	223	None	Forbidden	Forbidden	D	12, 25, 48, 127
	Calcium arsenate	6.1	UN1573	II	6.1	IB8, IP2, IP4, T3, TP33	153	212	242	25 kg	100 kg	A	
	Calcium arsenate and calcium arsenite, mixtures, solid	6.1	UN1574	II	6.1	IB8, IP2, IP4, T3, TP33	153	212	242	25 kg	100 kg	A	
	Chloroacetonitrile	6.1	UN2668	II	6.1, 3	2, B9, B14, B32, B74, IB9, T20, TP2, TP38, TP45	None	227	244	Forbidden	Forbidden	A	12, 40, 52
G	Corrosive liquids, toxic, n.o.s.	8	UN2922	I	8, 6.1	A6, A7, B10, T14, TP2, TP13, TP27	None	201	243	0.5 L	2.5 L	B	40
				II	8, 6.1	B3, IB2, T7, TP2	154	202	243	1 L	30 L	B	40
				III	8, 6.1	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	B	40
	Cyclotrimethylenetrinitramine and oxygen, mixtures, wetted or desensitized see RDX and HMX mixtures, wetted or desensitized etc.												
	Detonators, non-electric, for blasting	1.4S	UN0455	II	1.4S		63(f), 63(g)	62	None	100 kg	25 kg	05	
	Diethylzinc	4.2	UN1366	I	4.2, 4.3	173, B11, T21, TP2, TP7	None	181	244	Forbidden	Forbidden	D	18
	2-Dimethylaminoacetonitrile	3	UN2378	II	3, 6.1	IB2, T7, TP1	150	202	243	1 L	60 L	A	40, 52
	Dimethylzinc	4.2	UN1370	I	4.2, 4.3	173, B11, B16, T21, TP2, TP7	None	181	244	Forbidden	Forbidden	D	18
	Explosive, blasting, type A	1.1D	UN0081	II	1.1D		None	62	None	Forbidden	Forbidden	10	19E, 21E
	Explosive, blasting, type B	1.1D	UN0082	II	1.1D		None	62	None	Forbidden	Forbidden	10	19E

	Explosive, blasting, type B or Agent blasting, Type B	I II 1.5D	UN0331	II 1.5D	None ...	62 *	Forbidden	10	19E
A I W IW	Explosive, blasting, type E	* I 1.D UN0241 1.5D UN0332	II 1.1D ....	*	.....	62 *	Forbidden	10	19E
	Explosive, blasting, type E or Agent blasting, Type E	*	II 1.5D .....	.....	105, 106	62 *	Forbidden	10	19E
	Fibers, animal or Fibers, vegetable burnt, wet or damp	4.2 UN1372 4.1 UN3360	III 4.2 ....	.....	151	213	Forbidden No Limit	A	.....
	Fibers, vegetable, dry	*	III 4.1 ....	.....	137	213	No Limit	A	.....
	Gasoline	3 UN1203	II 3	*	150	202	5 L	E	.....
	Hydrogen peroxide and peroxyacetic acid mixtures, stabilized with acids, water and not more than 5 percent peroxyacetic acid.	5.1 UN3149	II 5.1, 8 ...	*	None ...	202	1 L	D	25, 66, 75
	Hydrogen peroxide, aqueous solutions with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary).	5.1 UN2014	II 5.1, 8 ...	*	None ...	202	1 L	D	25, 66, 75
	Hydrogen peroxide, aqueous solutions with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary).	5.1 UN2984	III 5.1	*	152	203	2.5 L	B	25, 66, 75
	Hypochlorite solutions	8 UN1791	II 8	*	154	202	1 L	B	26
	Isopropyl nitrate	3 UN1222	II 3	*	150	202	5 L	D	.....
	Lithium alkyls, liquid	4.2 UN2445	I 4.2, 4.3	*	None ...	181	Forbidden	D	.....
	Lithium alkyls, solid	4.2 UN3433	I 4.2, 4.3	*	None ...	181	Forbidden	D	.....
	Lithium batteries, contained in equipment	9 UN3091	II 9	*	185	185	See A102, A104	35 kg gross	.....
	Lithium batteries packed with equipment	9 UN3091	II 9	*	185	185	See A101, A103	35 kg gross	.....
	Lithium battery	9 UN3090	II 9	*	185	185	See A100	35 kg gross	.....
	Magnesium diphenyl	4.2 UN2005	I 4.2	*	None ...	187	Forbidden	C	.....
	2-Methylbutanal	3 UN3371	II 3	*	150	202	5 L	B	.....
	n-Propyl nitrate	3 UN1865	II 3	*	150	202	5 L	D	44, 89, 90, 100
G	Organoarsenic compound, liquid, n.o.s	6.1 UN3280	I 6.1	*	None ...	211	1 L	B	.....
			II 6.1	*	153	212	5 L	B	.....
			III 6.1	*	153	213	60 L	A	.....
G	Organometallic compound, toxic, liquid, n.o.s	6.1 UN3282	I 6.1	*	None ...	211	1 L	B	.....
			II 6.1	*	153	212	5 L	B	.....

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

(1) Sym- bols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identifica- tion nos.	(5) PG	(6) Label codes	(7) Special provi- sions	(8) Packaging (§ 173. * * *)			(9) Quantity limitations		(10) Vessel stow- age	
							Excep- tions	Non- bulk	Bulk	Passenger aircraft/rail	Cargo air- craft only	Loca- tion	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Organometallic substance, liquid, water-reactive	* 4.3	* UN3398	III	6.1	IB3, T7, TP1, TP28	153	213	240	60 L	220 L	A	.....
				I	4.3	T13, TP2, TP7	None	*	244	Forbidden	1 L	E	40, 52
				II	4.3	IB1, T7, TP2, TP7	None	202	243	1 L	5 L	E	40, 52
				III	4.3	IB2, T7, TP2, TP7	None	203	242	5 L	60 L	E	40, 52
G	Organometallic substance, liquid, water-reactive, flammable	4.3	UN3399	I	4.3, 3	T13, TP2, TP7	None	201	244	Forbidden	1 L	E	40, 52
				II	4.3, 3	IB1, IP2, T7, TP2, TP7	None	202	243	1 L	5 L	E	40, 52
				III	4.3, 3	IB2, IP4, T7, TP2, TP7	None	203	242	5 L	60 L	E	40, 52
				II	4.1	*	None	224	None	10 L	25 L	D	52, 53
D	Sulfur	*	9 NA1350	III	9	30, IB8, IP2	None	*	240	No Limit	No Limit	A	19, 74
I	Sulfur, molten	*	UN2448	III	4.1	30, IB1, T1, TP3	None	213	247	Forbidden	Forbidden	C	74
G	Sulfuric acid, fuming with less than 30 percent free sulfur trioxide	8	UN1831	I	8	A3, A7, B84, N34, T20, TP2, TP12, TP13	None	*	243	Forbidden	2.5 L	C	14, 40
				I	8, 6.1	2, B9, B14, B32, B74, B77, B84, N34, T20, TP2, TP12, TP13	None	227	244	Forbidden	Forbidden	C	14, 40
				I	6.1	141, IB7, IP1, T6, TP33	None	211	243	5 kg	50 kg	B	.....
				II	6.1	141, IB8, IP2, IP4, T3 TP33	None	212	243	25 kg	100 kg	B	.....
G	Toxins, extracted from living sources, solid, n.o.s.	6.1	UN3462	III	6.1	141, IB8, IP3, T1 TP33	153	213	241	100 kg	200 kg	A	.....
				I	6.1	*	*	*	*	*	*	*	*

■ 3. In § 172.102:

■ a. In paragraph (c)(1), Special Provision 173 is added.

■ b. In paragraph (c)(3), Special Provision B69 is revised.

■ c. In paragraph (c)(4), in Table 1.—IB Codes (IBC Codes), two entries are revised.

■ d. In paragraph (c)(7), in the Table of Portable Tank T Codes T1–T22, one entry is revised.

■ e. In paragraph (c)(8), the formula in Special Provision TP3 is revised.

The revisions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions.

* * * * *

173 An appropriate generic entry may be used for this material.

* * * * *

(3) * * *

Code/Special Provisions.

* * * * *

B69 Dry sodium cyanide or potassium cyanide may be shipped in sift-proof weather-resistant metal covered hopper car, covered motor vehicles, portable tanks or non-specification bins. Bins must be approved by the Associate Administrator.

* * * * *

(4) * * *

TABLE 1.—IB CODES (IBC CODES)

IBC Code	Authorized IBCs
	* * * * *
IB2	<i>Authorized IBCs:</i> Metal (31A, 31B and 31N); Rigid plastics (31H1 and 31H2); Composite (31HZ1). <i>Additional Requirement:</i> Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130kPa at 55 °C (1.3 bar at 131 °F) are authorized.

TABLE 1.—IB CODES (IBC CODES)—Continued

IBC Code	Authorized IBCs
IB3	<i>Authorized IBCs:</i> Metal (31A, 31B and 31N); Rigid plastics (31H1 and 31H2); Composite (31HZ1 and 31HA2, 31HB2, 31HN2, 31HD2 and 31HH2). <i>Additional Requirement:</i> Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized, except for UN2672 (also see Special Provision IP8 in Table 2 for UN2672).
	* * * * *
	* * * * *
(7) * * *	

TABLE OF PORTABLE TANK T CODES T1–T22

[Portable tank codes T1–T22 apply to liquid and solid hazardous materials of Classes 3 through 9 which are transported in portable tanks.]

Portable tank instruction	Minimum test pressure (bar)	Minimum shell thickness (in mm-reference steel) (See § 178.274(d)(2))	Pressure-relief requirements (See § 178.275(g))	Bottom opening requirements (See § 178.275(d))
(1)	(2)	(3)	(4)	(5)
T1	1.5	§ 178.274(d)(2)	Normal	§ 178.275(d)(2)
	*	*	*	*

* * * * *

(8) * * *

Code/Special Provisions.

* * * * *

TP3 The maximum degree of filling (in %) for solids transported above their melting points and for elevated temperature liquids shall be determined by the following:

$$\left(\text{Degree of filling} = 95 \frac{d_f}{d_r} \right)$$

Where: d_f and d_r are the mean densities of the liquid at the mean temperature of the liquid during filling and the maximum mean bulk temperature during transport respectively.

* * * * *

§ 172.202 [Amended]

■ 4. In § 172.202, in paragraph (a)(5)(i), in the first sentence, the wording “Class I materials,” is revised to read “Class 1 materials.”

■ 4a. In § 172.203, paragraph (m)(2) is revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(m) * * *

(2) For materials that are poisonous by inhalation (see § 171.8 of this subchapter), the words “Poison-Inhalation Hazard” or “Toxic-Inhalation Hazard” and the words “Zone A”, “Zone B”, “Zone C”, or “Zone D”, for gases or “Zone A” or “Zone B” for liquids, as appropriate, must be entered on the shipping description. The word “Poison” or “Toxic” or the phrase “Poison-Inhalation Hazard” or “Toxic Inhalation Hazard” need not be repeated if the words “Poison Inhalation” otherwise appears in the shipping description.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 5. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

■ 6. In § 173.3, paragraph (c) introductory text is revised to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(c) *Salvage drums.* Packages of hazardous materials that are damaged, defective, or leaking, packages found to be not conforming to the requirements of this subchapter after having been placed in transportation, and hazardous materials that have spilled or leaked may be placed in a metal or plastic removable head salvage drum that is compatible with the lading and shipped for repackaging or disposal under the following conditions:

* * * * *

■ 6a. In § 173.25, paragraph (a)(4) is revised to read as follows:

§ 173.25 Authorized packagings and overpacks.

(a) * * *

* * * * *

(4) The overpack is marked with the word "OVERPACK" when specification packagings are required, unless specification markings on the inside packages are visible. Alternatively, an overpack marked with a statement indicating that the "inside (inner) packages comply with prescribed specifications" may be used to satisfy the provisions of this paragraph until October 1, 2007.

* * * * *

■ 6b. In § 173.115, paragraphs (a)(2) and (k)(3) are revised to read as follows:

§ 173.115 Class 2, Division 2.1, 2.2 and 2.3 Definitions.

(a) * * *

* * * * *

(2) Has a flammable range at 101.3 kPa (14.7 psia) with air of at least 12 percent regardless of the lower limit. Except for aerosols, the limits specified in paragraphs (a)(1) and (a)(2) of this section shall be determined at 101.3 kPa (14.7 psia) of pressure and a temperature of 20° C (68 °F) in accordance with the ASTM E681–85, Standard Test Method for Concentration Limits of Flammability of Chemicals or other equivalent method approved by the Associate Administrator. The flammability of aerosols is determined by the tests specified in § 173.115 (k) of this section.

* * * * *

(k) * * *

* * * * *

(3) Aerosols not meeting the provisions of paragraphs (a) or (b) of this section must be classed in accordance with the appropriate tests of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter). An aerosol which was tested in accordance with the requirements of this subchapter in effect on December 31, 2005 is not required to be retested.

* * * * *

§ 173.151 [Amended]

■ 7–8. In § 173.151, in paragraph (c), in the first sentence, the wording "171.8 of this subchapter." is revised to read "§ 171.8 of this subchapter."

■ 9. In § 173.185, paragraph (e)(6) is revised to read as follows:

§ 173.185 Lithium batteries and cells.

* * * * *

(e) * * *

(6) Each cell or battery is of the type proven to meet the lithium battery requirements in the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter). A cell or battery and equipment containing a cell or battery of a design type which was first

transported prior to January 1, 2006 and is of a type proven to meet the criteria of Class 9 by testing in accordance with the tests in the UN Manual of Tests and Criteria, Third Revised Edition, 1999 is not required to be retested;

* * * * *

§ 173.212 [Amended]

■ 10. In § 173.212, in paragraph (c), the wording "Glass, porcelain or stoneware in steel, aluminum, wooden or fiberboard box: 6PA2, 6PB1, 6PC, or 6PG2" is revised to read "Glass, porcelain or stoneware in steel, aluminum, wooden or fiberboard box: 6PA2, 6PB2, 6PC, or 6PG2".

§ 173.213 [Amended]

■ 11. In § 173.213, in paragraph (c), the wording "Glass, porcelain or stoneware in steel, aluminum, wooden or fiberboard box: 6PA2, 6PB1, 6PC, or 6PG2" is revised to read "Glass, porcelain or stoneware in steel, aluminum, wooden or fiberboard box: 6PA2, 6PB2, 6PC, or 6PG2".

■ 12. In § 173.220, paragraphs (a)(3) and (g) are revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles or equipment.

(a) * * *

(3) Except as provided in paragraph (e)(1) of this section, it contains other hazardous materials subject to the requirements of this subchapter.

* * * * *

(g) *Exceptions.* Except as provided in paragraph (e)(2) of this section, shipments made under the provisions of this section—

(1) Are not subject to any other requirements of this subchapter, for transportation by motor vehicle or rail car; and

(2) Are not subject to the requirements of subparts D, E and F (marking, labeling and placarding, respectively) of part 172 of this subchapter or § 172.604 of this subchapter (emergency response telephone number) for transportation by vessel or aircraft. For transportation by aircraft, all other applicable requirements of this subchapter, including shipping papers, emergency response information, notification of pilot-in-command, general packaging requirements, and the requirements specified in § 173.27 must be met. For transportation by vessel, additional exceptions are specified in § 176.905 of this subchapter.

§ 173.225 [Amended]

■ 13. In § 173.225 the following changes are made:

- a. In paragraph (c), in the Organic Peroxide Table, under the entry "Dicumyl peroxide, UN3110", in column 8, the number "9" is added.
- b. In paragraph (c), in the Organic Peroxide Table, in column 8, the number "29" is removed in each place it appears.
- c. In paragraph (c), in the Organic Peroxide Table, in Note 12, the paragraph reference "(c)(2)" is revised to read "(b)(2)."
- d. In paragraph (c), in the Organic Peroxide Table, "Note 29" is removed.
- e. In paragraph (g), in the Organic Peroxide Portable Tank Table, under the entry "ORGANIC PEROXIDE, TYPE F, LIQUID," in the second column, the wording "Isopropyl cumyl hydroperoxide, not more than 72% in diluent type A" is revised to read "Isopropyl cumyl hydro-peroxide, not more than 72% in diluent type A."
- f. In paragraph (g), in the Organic Peroxide Portable Tank Table, under the entry "ORGANIC PEROXIDE, TYPE F, LIQUID," in the second column, the wording "p-Menthyl hydro-peroxide, not more than 72% in diluent type A" is revised to read "p-Menthyl hydro-peroxide, not more than 72% in diluent type A."
- g. Paragraph (h)(3)(xii) is revised to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(h) * * *

(3) * * *

(xii) DOT 57 metal portable tanks are authorized only for those materials or mixtures of two or more materials that are provided with a reference to Note 9 in Column 8 of the Organic Peroxide Table, found in paragraph (c) of this section. DOT 57 portable tanks must conform to the venting requirements of paragraph (f) of this section. These portable tanks are not subject to any other requirements of paragraph (h) of this section.

* * * * *

■ 14. Section 173.227 is revised to read as follows:

§ 173.227 Materials poisonous by inhalation, Division 6.2, Packing Group I, Hazard Zone B.

(a) In packagings as authorized in § 173.226 and seamless and welded specification cylinders conforming to the requirements of § 173.40.

(b) 1A1, 1B1, 1N1 or 1H1 drum or 6HA1 composite further packed in a 1A2 or 1H2 drum. Both the inner and

outer drums must conform to the performance test requirements of subpart M of part 178 of this subchapter at the Packing Group I performance level. The outer drums may be tested either as a package intended to contain inner packagings (combination package) or as a single packaging intended to contain solids or liquids at a mass corresponding to the mass of the assembled packaging system. The outer drum must have a minimum thickness of 1.35 mm (0.053 inches) for a 1A2 outer drum or 6.30 mm (0.248 inches) for a 1H2 outer drum. Outer 1A2 and 1H2 drums must withstand a hydrostatic test pressure of 100 kPa (15 psig). Capacity of the inner drum may not exceed 220 liters. In addition, the inner drum must conform to all of the following requirements:

(1) Satisfactorily withstand the leakproofness test in § 178.604 of this subchapter using an internal air pressure of at least two times the vapor pressure at 55 °C (131 °F) of the material to be packaged;

(2) Have screw closures that are—

(i) Closed and tightened to a torque prescribed by the closure manufacturer, using a properly calibrated device that is capable of measuring torque;

(ii) Physically held in place by any means capable of preventing back-off or loosening of the closure by impact or vibration during transportation; and

(iii) Provided with a cap seal that is properly applied in accordance with the cap seal manufacturer's recommendations and is capable of withstanding an internal pressure of at least 100 kPa (15 psig).

(3) Have a minimum thickness as follows:

(i) For a 1A1 drum, 0.69 mm (0.027 inch);

(ii) For a 1B1 drum, 2.79 mm (0.110 inch);

(iii) For a 1H1 drum, 1.14 mm (0.045 inch); or

(iv) For a 6HA1 drum, the plastic inner container shall be 1.58 mm (0.0625 inch), the outer steel drum shall be 0.70 mm (0.027 inch).

(4) Be isolated from the outer drum by a shock-mitigating, non-reactive material which completely surrounds the inner packaging on all sides.

(5) Prior to reuse, all authorized inner drums must be leakproofness tested and marked in accordance with § 173.28 using a minimum test pressure as indicated in paragraph (b)(1) of this section.

(c) 1A1, 1B1, 1H1, 1N1, 6HA1 or 6HH1 drums described in paragraph (b) of this section may be used without being further packed in a 1A2 or 1H2 drum if the shipper loads the material,

blocks and braces the drums within the transport vehicle and seals the transport vehicle used. Drums may not be stacked (double decked) within the transport vehicle. Shipments must be from one origin to one destination only without any intermediate pickup or delivery.

§ 173.313 [Amended]

■ 15. In § 173.313 the following changes are made:

■ (a) In the “UN Portable Tank Table for Liquefied Compressed Gases”, in the first column, under the entry “1912”, the number “1954” is removed.

■ (b) In the “UN Portable Tank Table for Liquefied Compressed Gases”, in the second column, under the entry “Methyl chloride and methylene chloride mixture”, the wording “n.o.s.” is removed.

■ (c) In the “UN Portable Tank Table for Liquefied Compressed Gases”, under the entry “Methyl chloride and methylene chloride mixture”, in the sixth column the number “0.811954” is revised to read “0.081”.

■ (d) In the “UN Portable Tank Table for Liquefied Compressed Gases”, in the first column, under the entry “NA”, the number “1954” is added.

■ (e) In the “UN Portable Tank Table for Liquefied Compressed Gases”, in the second column, under the entry “Insecticide gases, flammable”, the wording “n.o.s.” is added.

■ (f) In the “UN Portable Tank Table for Liquefied Compressed Gases”, in the second column, the entry “Insecticide gases, flammable” is revised to read “Insecticide gases, *flammable*”.

PART 175—CARRIAGE BY AIRCRAFT

■ 16. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.30 [Amended]

■ 17. In § 175.30, paragraph (a)(5) is removed.

PART 176—CARRIAGE BY VESSEL

■ 18. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 176.83 [Amended]

■ 19. In § 176.83, the following changes are made:

■ a. In paragraph (l), in “Table 176.83(l)(3)—Segregation of Cargo Transport Units on Board Hatchless Container Ships”, under the first entry “Away from”, in the tenth and eleventh

columns the wording “one container space” is revised to read “One container space” respectively.

■ b. In paragraph (l), in “Table 176.83(l)(3)—Segregation of Cargo Transport Units on Board Hatchless Container Ships”, under the third entry “Separated by a complete compartment or hold from”, in the tenth column, the wording “Tree” is revised to read “Three”.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 20–21. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.274 [Amended]

■ 22. In § 178.274, in paragraph (f)(1)(v), the wording “(IBR, see § 171.1 of this subchapter);” is revised to read “(IBR, see § 171.7 of this subchapter);”.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 24. In § 180.352, paragraph (d)(1)(iv) is revised to read as follows:

§ 180.352 Requirements for retest and inspection of IBCs.

* * * * *

(d) * * *

(1) * * *

(iv) The person performing the tests and inspections after the repair must durably mark the IBC near the manufacturer's UN design type marking to show the following:

(A) The country in which the tests and inspections were performed;

(B) The name or authorized symbol of the person performing the tests and inspections; and

(C) The date (month, year) of the tests and inspections.

* * * * *

Issued in Washington, DC, on June 6, 2005, under authority delegated in 49 CFR part 1.

Stacey L. Gerard,

Acting Assistant Administrator/Chief Safety Officer, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 05–11648 Filed 6–13–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622****[I.D. 060705B]****Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2005 Deep-Water Grouper Commercial Fishery**

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for deep-water grouper (misty grouper, snowy grouper, yellowedge grouper, warsaw grouper, and speckled hind) in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined the deep-water grouper quota for the commercial fishery will have been reached by June 22, 2005. This closure is necessary to protect the deep-water grouper resource.

DATES: Closure is effective 12:01 a.m., local time, June 23, 2005, until 12:01 a.m., local time, on January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727-824-5305, fax 727-824-5308, e-mail Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council

and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for deep-water grouper in the Gulf of Mexico at 1.02 million lb (463,636 kg) for the current fishing year, January 1 through December 31, 2005.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial quota of 1.02 million lb (463,636 kg) for deep-water grouper will be reached on or before June 22, 2005. Accordingly, NMFS is closing the commercial deep-water grouper fishery in the Gulf of Mexico EEZ from 12:01 a.m., local time, on June 23, 2005, until 12:01 a.m., local time, on January 1, 2006. The operator of a vessel with a valid reef fish permit having deep-water grouper aboard must have landed and bartered, traded, or sold such deep-water grouper prior to 12:01 a.m., local time, June 23, 2005.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of deep-water grouper in or from the Gulf of Mexico EEZ, and the sale or purchase of deep-water grouper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of deep-water grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, June 23, 2005, and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: June 8, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 05-11734 Filed 6-9-05; 1:23 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 70, No. 113

Tuesday, June 14, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20515; Directorate Identifier 2005-CE-09-AD]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC-6, PC-6-H1, PC-6-H2, PC-6/350, PC-6/350-H1, PC-6/350-H2, PC-6/A, PC-6/A-H1, PC-6/A-H2, PC-6/B-H2, PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4, PC-6/C-H2, and PC-6/C1-H2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: The FAA proposes to revise an earlier proposed airworthiness directive (AD) that applies to all Pilatus Aircraft Ltd. (Pilatus) (also identified as Fairchild Republic Company and Fairchild Heli Porter) Model PC-6 airplanes. The earlier NPRM proposed to require you to repetitively inspect the stabilizer-trim attachment and structural components for cracks, corrosion, and discrepancies and replace any defective part with a new part. The earlier NPRM also proposed to require you to replace all Fairchild connecting pieces with a Pilatus connecting piece. The earlier NPRM resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. This proposed AD would retain the actions from the earlier NPRM and would require you to replace fittings without an index after the part number (P/N) with an improved part. This proposed AD results from incorporating revised manufacture service information to include a procedure for replacing certain fittings with an improved part and to correct the allowable limits of the actuator attachment hole diameters. This proposed AD also clarifies the

applicability. Since this action imposes an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on this additional action.

DATES: We must receive any comments on this proposed AD by July 13, 2005.

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

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
 - **Government-Wide Rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
 - **Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.
 - **Fax:** 1-202-493-2251.
 - **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- To get the service information identified in this proposed AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH-6371 Stans, Switzerland; telephone: +41 41 619 6580; facsimile: +41 41 619 6576.

To view the comments on this proposed AD, go to <http://dms.dot.gov>. The docket number is FAA-2005-20515; Directorate Identifier 2005-CE-09-AD.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, "FAA-2005-20515; Directorate Identifier 2005-CE-09-AD" at the beginning of your comments. We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing

each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA-2005-20515. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

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

Discussion

What is the background of the subject matter? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Model PC-6 airplanes. The FOCA reports that the lower attachment bracket of the horizontal stabilizer actuator broke which resulted in an emergency landing outside the airport.

The FOCA also reports two other instances of total failure of the stabilizer trim attachment on in-service airplanes.

What is the potential impact if FAA took no action? If not detected and corrected, defects in the stabilizer-trim attachment and surrounding structural components could cause the stabilizer-trim attachment to fail. This failure could lead to loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Model PC-6 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 24, 2005 (70 FR 15019). The NPRM proposed to require you to:

- Inspect the stabilizer-trim attachment and structural components (the fitting, the connecting piece, the bearing fork, the bearing support assembly, and the auxiliary frame, as applicable) for cracks and corrosion;
- Inspect the diameters of the boltholes on the fittings, auxiliary frame, and connecting piece (as applicable) for discrepancies;
- Replace any cracked, corroded, or defective part with a new part; and
- Replace all Fairchild connecting pieces with a Pilatus connecting piece.

Was the public invited to comment? The FAA encouraged interested persons to participate in developing this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Incorporate Revised Service Bulletin

What is the commenter's concern? Pilatus has revised the original service bulletin to include a requirement to replace fittings, part number (P/N) 116.40.06.033 without an index of "A" or "B" with an improved part, P/N 116.40.06.112.

Pilatus Service Bulletin No. 147, dated May 1985, requires you to inspect P/N 116.40.06.033 for cracks and to replace all cracked P/Ns 116.40.06.033 with an improved part, P/N 116.40.06.112. If no cracks are found, P/N 116.40.06.033 without an index of "A" or "B" can remain installed provided it is repetitively inspected for cracks every 100 hours time-in-service (TIS).

Pilatus Service Bulletin No. 147, dated May 1985, states that P/N 116.40.06.033 with an Index A is not subject to the 100-hour repetitive inspection.

Pilatus PC-6 Service Bulletin No. 53-001, Rev. No. 1, dated June 1, 2005, terminates the 100-hour repetitive inspection specified in Service Bulletin No. 147. The 100-hour repetitive inspection is terminated by requiring you to replace all P/Ns 116.40.06.033 without an index of "A" or "B" with an improved part, P/N 116.40.04.112.

Pilatus requests the actions in the revised service bulletin be included in the proposed AD action.

What is FAA's response to the concern? We agree with the commenter.

It is FAA's policy that reliance on critical repetitive inspections on airplanes utilized in commuter service for hire carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) The safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

The fitting is considered a critical structural component. Requiring replacement of all P/Ns 116.40.06.033 without an index of "A" or "B" with a P/N 116.40.06.112 terminates the 100-hour repetitive inspection specified in Pilatus Service Bulletin No. 147, dated May 1985.

We have confirmed with Pilatus that replacing P/Ns 116.40.06.033 without an index of "A" or "B" with a P/N 116.40.06.033 with an index of "A" or "B" also terminates the 100-hour repetitive inspection specified in Pilatus Service Bulletin No. 147, dated May 1985.

Since a design change exists that reduces the number of critical inspections, we will change this proposed AD to include this action.

Including this action imposes an additional burden over that proposed in the earlier NPRM. We are reopening the comment period to allow the public the opportunity to comment on this additional action.

Comment Issue No. 2: Change the Repetitive Inspection Intervals

What is the commenter's concern? The commenter states that repetitive dye-penetrant inspection of all affected parts at 100-hour TIS intervals could cause more damage. Dye-penetrant inspections require considerable paint stripping.

The Aircraft Maintenance Manual (AMM) for these airplanes currently requires a repetitive dye-penetrant inspection on the affected parts every 3,500 hours TIS or every 7 years, whichever occurs first.

The commenter requests the repetitive inspection intervals be changed to every 3,500 hours TIS or every 7 years, whichever occurs first, to coincide with the AMM.

What is FAA's response to the concern? We agree that the repetitive 100-hour TIS inspections could cause additional damage to the affected parts. The FAA's intent was to mandate the repetitive inspections of the AMM. The NPRM inadvertently carried 100 hours TIS as the repetitive interval. The correct interval for the repetitive inspection is 3,500 hours TIS.

The AMM specifies the inspection every 3,500 hours TIS or every 7 years, whichever occurs first. However, the only way we can ensure that all operators follow this AMM specification is through an AD. Therefore, we will make this change in the proposed AD action to ensure the inspections are done.

Comment Issue No. 3: Clarify the Applicability of the Affected Airplanes

What is the commenter's concern? A commenter states that it is not clear whether the proposed AD applied to Fairchild built Model PC-6 airplanes or to both Pilatus and Fairchild built Model PC-6 airplanes.

Also, it is unclear whether the proposed AD applies only to Model PC-6 airplanes or to all PC-6 series airplanes.

The commenter requests clarification on the applicability of the affected airplanes.

What is FAA's response to the concern? We agree with commenter that the applicability may be unclear.

Fairchild Republic Company and Fairchild Heli Porter manufactured certain Model PC-6 airplanes under the license agreement shown on the United States (U.S.) type certificate data sheet (TCDS) No. 7A15, which is currently held by Pilatus Aircraft Ltd.

This proposed AD applies to all PC-6 series airplanes, including those built by Fairchild Republic Company and Fairchild Heli Porter.

We will change the proposed AD action to clarify the applicability.

What events have caused FAA to issue a supplemental NPRM? In addition to the changes noted above, the manufacturer revised the service information to include a requirement for replacing the fitting without an index after the part number with an improved

part and to correct the allowable limits of the actuator attachment hole diameters.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

- The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC-6 airplanes of the same type design that are on the U.S. registry;
- We should change the NPRM to incorporate the concerns addressed by the commenters and incorporate the revised service information; and
- We should take AD action to correct this unsafe condition.

The Supplemental NPRM

How will the changes to the NPRM impact the public? Proposing to require you to replace fittings without an index after the part number with a different part goes beyond the scope of what was

originally proposed in the NPRM. Therefore, we are reopening the comment period and allowing the public the chance to comment on these additional actions.

What are the provisions of the supplemental NPRM? The proposed AD would require you to:

- Inspect the stabilizer-trim attachment and structural components (the fitting, the connecting piece, the bearing fork, the bearing support assembly, and the auxiliary frame, as applicable) for cracks and corrosion;
- Inspect the diameters of the boltholes on the fittings, auxiliary frame, and connecting piece (as applicable) for discrepancies;
- Replace any cracked, corroded, or defective part with a new part;
- Replace all Fairchild connecting pieces, P/N 6232.0026.XX with a Pilatus connecting piece. The Fairchild part has a rivet in the middle that is not on the Pilatus part; and
- Replace all fittings, P/N 116.40.06.033 without an index after the P/N with

an improved part, P/N 116.40.06.033 with an index after the P/N or P/N 116.40.06.112.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 41 airplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
11 work hours × \$65 per hour = \$715	Not applicable	\$715	\$715 × 41 = \$29,315.

We estimate the following costs to do any necessary replacements that would

be required based on the results of the proposed inspections. We have no way

of determining the number of airplanes that may need these replacements:

Labor cost	Parts cost	Total cost per airplane to replace all parts
10 work hours × \$65 = \$650	\$2,000 to replace all parts	\$650 + \$2,000 = \$2,650.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

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

under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket FAA-2005-20515; Directorate Identifier 2005-CE-09-AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

**PART 39—AIRWORTHINESS
DIRECTIVES**

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. FAA-2005-20515; Directorate Identifier 2005-CE-09-AD.

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

(a) We must receive comments on this proposed airworthiness directive (AD) by July 13, 2005.

**What Other ADs Are Affected By This
Action?**

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplanes, all manufacturer serial numbers (MSN), that are certificated in any category.

Note 1: These airplanes are also identified as Fairchild Republic Company PC-6 series airplanes and Fairchild Heli Porter PC-6 series airplanes.

Models

- (1) PC-6
- (2) PC-6-H1
- (3) PC-6-H2
- (4) PC-6/350
- (5) PC-6/350-H1
- (6) PC-6/350-H2
- (7) PC-6/A
- (8) PC-6/A-H1

- (9) PC-6/A-H2
- (10) PC-6/B-H2
- (11) PC-6/B1-H2
- (12) PC-6/B2-H2
- (13) PC-6/B2-H4
- (14) PC-6/C-H2
- (15) PC-6/C1-H2

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this proposed AD to detect and correct cracks in the stabilizer-trim attachment and surrounding structural components, which could result in failure of the stabilizer-trim attachment. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the following: (i) the stabilizer-trim attachment and structural components (fitting, connecting piece, bearing fork, bearing support assembly, and auxiliary frame, as applicable) for cracks and corrosion; and. (ii) the diameters of the actuator attachment bolt holes on the fittings, auxiliary frame, and connecting piece (as applicable) for discrepancies.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not-to-exceed 3,500 hours TIS or 7 years, whichever occurs first.	Follow Pilatus PC-6 Service Bulletin No. 53-001, Rev. No. 1, dated June 1, 2005.
(2) If cracks are found during any inspection required in paragraph (e)(1)(i) of this AD, replace the defective part with a new part.	Replace the defective part before further flight after the inspection in which cracks are found. After each replacement, continue with the repetitive inspection requirement in paragraph (e)(1) of this AD.	Follow Pilatus PC-6 Service Bulletin No. 53-001, Rev. No. 1, dated June 1, 2005.
(3) If corrosion or discrepancies are found during any inspection required in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD, do the following: (i) replace the defective part with a new part if the corrosion or discrepancy is beyond the repairable limits stated in the service information; or. (ii) repair the defective part if the corrosion or discrepancy is within the repairable limits stated in the service information..	Replace or repair the defective part before further flight after the inspection in which corrosion or discrepancies are found. After each replacement or repair, continue with the repetitive inspection requirement in paragraph (e)(1) of this AD.	Follow Pilatus PC-6 Service Bulletin No. 53-001, Rev. No. 1, dated June 1, 2005.
(4) Replace the following: (i) all Fairchild connecting pieces, part number (P/N) 6232.0026.XX, with a Pilatus connecting piece, P/N 6232.0026.XX. The Fairchild part has a rivet in the middle that is not on the Pilatus part; and. (ii) all fittings, P/N 116.40.06.033 without an index after the P/N, with an improved part, P/N 116.40.06.033 with an index of "A" or "B" after the P/N or with P/N 116.40.06.112	Within the next 100 hours TIS after the effective date of this AD. After replacement, repetitively inspect thereafter at intervals not-to-exceed 3,500 hours TIS or 7 years, whichever occurs first. If after the inspection required in paragraph (e)(1) of this AD, you determine that you already have a P/N 116.40.06.033 with an index of "A" or "B" or a P/N 116.40.06.112 installed, repetitively inspect thereafter at intervals not-to-exceed 3,500 hours TIS or 7 years, whichever occurs first after the part was installed.	Follow Pilatus PC-6 Service Bulletin No. 53-001, Rev. No. 1, dated June 1, 2005.
(5) Do not install any of the following: (i) Fairchild connecting piece, P/N 6232.0026.XX (it has a rivet in the middle that is not on the Pilatus part); and. (ii) fitting, P/N 116.40.06.033, without an index after the part number	As of the effective date of this AD	Follow Pilatus PC-6 Service Bulletin No. 53-001, Rev. No. 1, dated June 1, 2005.

Note 2: Even though not required in this AD, the FAA recommends that you send all defective parts to Pilatus at the address specified in paragraph (g) of this AD. With the part, include the aircraft serial number, flying hours, and cycles.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

Is There Other Information That Relates to This Subject?

(g) Swiss AD HB-2005-080, effective date March 2, 2005, also addresses the subject of this AD. The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, classified Pilatus PC-6 Service Bulletin No. 53-001, Rev. No. 1, dated June 1, 2005, as mandatory. The FAA anticipates that the FOCA will issue a new Swiss AD in order to ensure the continued airworthiness of these airplanes in Switzerland.

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

(h) You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH-6371 Stans, Switzerland; telephone: +41 41 619 6580; facsimile: +41 41 619 6576. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket number is FAA-2005-20515.

Issued in Kansas City, Missouri, on June 7, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-11703 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21434; Directorate Identifier 2004-NM-75-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 727 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 727 airplanes. This proposed AD would require repetitive inspections for cracks of the body skin, doubler, and bear strap at the forward edge of the upper and lower hinge cutouts of the forward entry door, related investigative actions, and corrective action if necessary. This proposed AD also would require a preventive modification. This proposed AD is prompted by reports of skin and bear strap cracks at hinge cutouts. We are proposing this AD to detect and correct cracks in the skin and bear strap at the hinge cutouts of the forward entry door, which could result in rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by July 29, 2005.

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

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

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

You may examine the contents of this AD docket on the Internet at <http://dms.dot.gov>, or at the Docket Management Facility, U.S. Department

of Transportation, 400 Seventh Street, SW., room PL-401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW. Renton, Washington 98055-4056; telephone (425) 917-6456; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-21434; Directorate Identifier 2004-NM-75-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

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

Discussion

We have received reports from 12 operators of skin cracks in the forward entry door cutouts on 75 Boeing Model 727 airplanes. The cracks were detected or found on airplanes that had accumulated between 19,500 and 65,500

total flight hours, and between 11,700 and 50,600 total flight cycles. The skin cracks were between 0.25 inch and 3.25 inches long and were initiated along the forward edge of the upper and lower hinge cutouts. One operator also reported cracks in the bear strap of the forward entry door. The airplane that had these cracks had accumulated 30,700 total flight hours and 28,100 total flight cycles. According to the manufacturer, the cracks were caused by fatigue, which resulted from cabin pressurization cycles.

Approximately 22% of these 75 airplanes had cracks at only the upper hinge cutout; 43% had cracks at only the lower hinge cutout; and 35% had cracks at both upper and lower hinge cutouts.

In addition, one operator reported cracks in the bear strap that is located in the fastener row directly above and below the hinge cutout on six airplanes. The operator found the cracks after installing a repair or preventative modification on three of the six airplanes.

Cracks in the skin and bear strap at the hinge cutouts of the forward entry door, if not detected and corrected, could result in rapid decompression of the airplane.

Related Rulemaking

On December 30, 1998, we issued Supplemental Structural Inspection Program AD 98-11-03 R1, amendment 39-10983 (64 FR 989, January 7, 1999) for Boeing Model 727 series airplanes. That AD, in addition to its primary purpose to require inspection of baseline structure, also addresses repairs, alterations, and modifications (RAMs). AD 98-11-03 R1 requires operators to provide damage tolerance-based inspection programs for RAMs that affect structurally significant items or that create new structurally significant items. Certain inspections in this proposed AD are alternative methods of compliance (AMOCs) for the inspections of certain repaired areas that are mandated by AD 98-11-03 R1.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 727-53A0198, Revision 2, dated October 30, 2003.

Revision 2 of the alert service bulletin describes procedures for airplanes based on whether repairs or preventative modifications have been done in accordance with the original issue, Revision 1, or Revision 2 of the service bulletin. These procedures are described in items 1, 2, 3, and 4 below.

1. For airplanes on which no repair or preventative modification has been

done in accordance with Boeing Service Bulletin 727-53-0198, dated January 11, 1990; or Revision 1, dated July 25, 1991; or Boeing Alert Service Bulletin 727-53A0198, Revision 2, dated October 30, 2003:

- Revision 2 of the alert service bulletin specifies to do a detailed inspection and high frequency eddy current (HFEC) inspections for cracks of the skin, doubler, and bear strap at the upper and lower hinge cutout.

- If no crack is found during any inspection, Revision 2 of the alert service bulletin specifies to apply certain finishes and repeat the inspections. Doing the preventative modification or repairing in accordance with Revision 2 of the alert service bulletin eliminates only these repetitive inspections.

- If any crack is found during any inspection, and the crack does not exceed certain limits, Revision 2 of the alert service bulletin specifies to repair the crack, and do an HFEC inspection of the trim radius to verify that the crack is removed.

- If any crack is found during any inspection, and the crack exceeds certain limits, Revision 2 of the alert service bulletin specifies to contact Boeing for repair instructions.

2. For airplanes on which any repair or preventative modification has been done in accordance with Boeing Service Bulletin 727-53-0198, dated January 11, 1990:

- Revision 2 of the alert service bulletin specifies to do an inspection to determine if a filler or shim was installed below the S-10 lap joint common to the upper hinge cutout.

- If the filler or shim is missing, Revision 2 of the alert service bulletin specifies to remove the external doubler, do detailed and HFEC inspections of the hinge cutout for cracks, and repair or modify the area if necessary.

- If filler and shim are not missing, Revision 2 of the alert service bulletin specifies to do an HFEC inspection of the pre-existing fastener holes and modifying the pre-existing fastener holes.

3. For airplanes on which any repair or preventative modification has been accomplished in accordance with Boeing Service Bulletin 727-53-0198, dated January 11, 1990; or Revision 1, dated July 25, 1991:

- If pre-existing fastener holes common to the repair or preventative modification were HFEC inspected and oversized: Revision 2 of the alert service bulletin specifies to do an internal HFEC inspection of the bear strap and an external detailed inspection of the

repair or preventative modification and its periphery for cracks.

- If pre-existing fastener holes common to the repair or preventative modification were not HFEC inspected: Revision 2 of the alert service bulletin specifies to remove all pre-existing fasteners common to the repair or preventative modification; do an open hole HFEC inspection of the fastener holes for cracks; and oversize the fasteners holes, if no crack is found; and do an internal HFEC inspection of the bear strap and an external detailed inspection of the repair or preventative modification and its periphery for cracks. If any crack is found during the inspection, repair and contact Boeing.

4. For airplanes on which any repair or preventative modification has been done in accordance with Revision 2 of the alert service bulletin, the alert service bulletin specifies to do the following:

- An initial and repetitive HFEC inspections for cracks of the bear strap.

- Initial and repetitive internal inspections for cracks of any repair or preventative modification and its periphery.

- If any crack is found, Revision 2 of the alert service bulletin specifies to repair and contact Boeing.

Revision 2 of the alert service bulletin also describes a preventive modification, which includes doing an open hole HFEC inspection for cracks, oversizing fastener holes, installing doublers, and repairing cracks.

The repairs specified in Revision 2 of the alert service bulletin include doing HFEC inspections for cracks and installing fillers or shims, doublers, and triplers if necessary.

Revision 2 of the alert service bulletin notes that certain inspections have been approved as an AMOC for the inspections of items F-13A and F-14A of the 727 Supplemental Structural Inspection Document mandated by AD 98-11-03 R1 for the areas covered by the repairs/preventative modification.

We have determined that accomplishment of the actions specified in Revision 2 of the alert service bulletin will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require repetitive inspections for cracks of the body skin, doubler, and bear strap at the forward edge of the upper and lower

hinge cutouts of the forward entry door, related investigative actions, and corrective action if necessary. This proposed AD also would require a preventive modification. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and the Alert Service Bulletin."

Differences Between the Proposed AD and the Alert Service Bulletin

Where Revision 2 of Boeing Alert Service Bulletin 727-53A0198 specifies that you may contact the manufacturer for instructions on how to repair certain conditions; and where paragraphs 3.B.9. and 3.B.10. of the Accomplishment Instructions of the alert service bulletin specifies to "repair before further flight and contact the Boeing Company;" this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the

certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the FAA to make those findings.

The alert service bulletin recommends that operators do the preventive modification before the airplane accumulates 60,000 total flight cycles; however, this proposed AD would require the preventative modification before the airplane accumulates 60,000 total flight cycles, or within 3,000 flight cycles after the effective date of the AD,

whichever occurs later, unless the repair has already been done. In developing an appropriate compliance time for this proposed AD, we considered the manufacturer's recommendation as well as the amount of time necessary to do the inspections, preventative modification, and any necessary repair. We also considered that some airplanes could be close to 60,000 total flight cycles at the effective date of the AD, and we considered that operators of those airplanes should be allowed a grace period in which to accomplish the preventative modification. In light of all of these factors, we find that a compliance time of 60,000 total flight cycles, or 3,000 flight cycles after the effective date of the AD, whichever occurs later, represents an appropriate interval for affected airplanes to continue to operate without compromising safety.

We also added a grace period of 3,000 flight cycles after the effective date of the AD for the post repair/preventative modification inspections that the service bulletin specifies to be done within 40,000 flight cycles after doing the repair or preventative modification. We find that a compliance time of 40,000 flight cycles after doing the repair or preventative modification, or 3,000 flight cycles after the effective date of the AD, whichever occurs later, represents an appropriate interval for affected airplanes to continue to operate without compromising safety.

Operators should note that where Figures 5 and 6 of the Accomplishment Instructions of the alert service bulletin specify code F, this proposed AD refers

to code D. Code F is a typographical error in the service bulletin and does not exist in the table that explains the codes.

Although paragraphs 3.B.9. and 3.B.10. of the Accomplishment Instructions of the alert service bulletin specify that operators should contact Boeing after repairing cracks, this proposed AD does not include that requirement.

Operators should note that, although the Appendix A of the alert service bulletin contains instructions for reporting discrepancies to Boeing Customer Support Technical Services, this proposed AD does not require those actions.

These differences have been coordinated with Boeing.

Clarification of Alert Service Bulletin

For airplanes on which the repair or preventative modification has not been done, paragraph 1.E., Compliance, of the alert service bulletin does not specify the applicable paragraphs in the Accomplishment Instructions of the alert service bulletin for doing the actions. Paragraphs 3.B.1 through 3.B.7 of the Accomplishment Instructions of the alert service bulletin describe the actions for airplanes on which the repair or preventative modification has not been done.

Costs of Compliance

There are about 1,015 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S. airplanes	Fleet Cost
Inspection	7	\$65	\$455 per inspection cycle	589	\$267,995
Preventative modification	40	65	\$2,600	589	1,531,400

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing

regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the

national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA-2005-21434; Directorate Identifier 2004-NM-75-AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by July 29, 2005.

Affected ADs

(b) None

Applicability

(c) This AD applies to all Boeing Model 727, 727C, 727-100, 727-100C, 727-200, and 727-200F series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of skin and bear strap cracks at hinge cutouts of the forward entry door. We are issuing this AD to detect and correct cracks in the skin and bear strap at the hinge cutouts of the forward entry door, which could result in rapid decompression of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term "alert service bulletin," as used in this AD, means Boeing Alert Service Bulletin 727-53A0198, Revision 2, dated October 30, 2003. Although the alert service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Initial and Repetitive Inspections for Airplanes on Which No Actions Have Been Done

(g) For airplanes on which no repair or preventative modification has been done

before the effective date of this AD in accordance with Boeing Service Bulletin 727-53-0198, dated January 11, 1990; or Revision 1, dated July 25, 1991; or the alert service bulletin: Within 3,000 flight cycles after the effective date of this AD, do detailed and high frequency eddy current (HFEC) inspections for cracks of the skin, doubler, and bear strap at the upper and lower hinge cutout in accordance with the Accomplishment Instructions of the alert service bulletin.

(1) If no crack is found, before further flight, apply finishes in accordance with the Accomplishment Instructions of the alert service bulletin and repeat the inspections required by paragraph (g) of this AD thereafter at intervals not to exceed 3,000 flight cycles, until the preventative modification required by paragraph (j) of this AD or a repair required by paragraph (m) of this AD is done.

(2) If any crack is found, before further flight, do the repair specified in paragraph (m) of this AD.

Inspections for Airplanes on Which Actions Have Been Done in Accordance With the Original Issue of the Service Bulletin

(h) For airplanes on which any repair or preventative modification has been done before the effective date of this AD in accordance with Boeing Service Bulletin 727-53-0198, dated January 11, 1990: Within 12,000 flight cycles after the repair or preventative modification was done or within 3,000 flight cycles after the effective date of this AD, whichever is later, do a detailed inspection to determine if a filler or shim was installed below the S-10 lap joint common to the upper hinge cutout, an internal HFEC inspection for cracks of the bear strap, and an external detailed inspection for cracks of the repair or preventative modification and its periphery, in accordance with the Accomplishment Instructions of the alert service bulletin.

(1) If the filler or shim is missing, before further flight, remove the external doubler, do detailed and HFEC inspections for cracks at the hinge cutout areas specified in Figure 1 of the alert service bulletin, and do an HFEC inspection of the pre-existing fastener holes for cracks, in accordance with the Accomplishment Instructions of the alert service bulletin.

(i) If no crack is found, before further flight, oversize the fastener holes in accordance with the Accomplishment Instructions of the alert service bulletin.

(ii) If any crack is found, before further flight, do the repair specified in paragraph (m) of this AD.

(2) If the filler and shim are not missing, before further flight, do an HFEC inspection of the pre-existing fastener holes for cracks in accordance with the Accomplishment Instructions of the alert service bulletin.

(i) If no crack is found, before further flight, oversize the fastener holes in accordance with the Accomplishment Instructions of the alert service bulletin.

(ii) If any crack is found, before further flight, do the repair specified in paragraph (m) of this AD.

Inspections for Airplanes on Which Actions Have Been Done in Accordance With the Revision 1 of the Service Bulletin

(i) For airplanes on which any repair or preventative modification has been done before the effective date of this AD in accordance with Boeing Service Bulletin 727-53-0198, Revision 1, dated July 25, 1991: Within 12,000 flight cycles after the repair or preventative modification was done or within 3,000 flight cycles after the effective date of this AD, whichever is later, do the actions in paragraph (i)(1) and (i)(2) of this AD, as applicable.

(1) If pre-existing fastener holes common to the repair or preventative modification have been HFEC inspected and oversized as specified in the alert service bulletin, do an internal HFEC inspection of the bear strap and an external detailed inspection for cracks of the repair or preventative modification and its periphery in accordance with the Accomplishment Instructions of the alert service bulletin. If any crack is found, before further flight, do the repair specified in paragraph (m) of this AD.

(2) If pre-existing fastener holes common to the repair or preventative modification have not been HFEC inspected and oversized as specified in the alert service bulletin, do an internal HFEC inspection of the bear strap, an external detailed inspection for cracks of the repair or preventative modification and its periphery, and remove all fasteners at original production locations common to the repair or preventative modification and do an open hole HFEC inspection for cracks of the fastener holes; in accordance with the Accomplishment Instructions of the alert service bulletin.

(i) If no crack is found, before further flight, oversize the fasteners holes before restoring the repair or preventative modification in accordance with the Accomplishment Instructions of the alert service bulletin.

(ii) If any crack is found, before further flight, do the repair specified in paragraph (m) of this AD.

Preventive Modification

(j) Before the accumulation of 60,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Do the preventive modification (including HFEC inspection) in accordance with the Accomplishment Instructions of the alert service bulletin. Doing the preventative modification terminates the repetitive inspections required by paragraph (g)(1) of this AD.

Note 1: Repairs or preventative modifications that were done using Boeing Service Bulletin 727-53-0198, dated January 11, 1990; or Revision 1, dated July 25, 1991; are not considered acceptable for complying with the requirements of paragraph (j) of this AD.

(k) In lieu of the preventative modification required by paragraph (j) of this AD, doing the applicable repair specified in paragraph (m) of this AD is acceptable.

(l) In lieu of the preventative modification required by paragraph (j) of this AD, doing the actions specified in paragraph (h) or (i) of this AD is acceptable for the airplanes identified in those paragraphs.

Repair

(m) If any crack is found during any inspection, preventative modification, or repair required by this AD, before further flight, do the applicable repair (including HFEC inspection) specified in paragraph (m)(1) or (m)(2) of this AD, as applicable. Doing the repair terminates the repetitive inspections required by paragraph (g)(1) of this AD. Doing the repair is acceptable for compliance with the requirements of paragraph (j) of this AD provided the repair is done within the time specified in that paragraph.

(1) If the crack does not exceed the limits described in the alert service bulletin, repair the crack in accordance with the applicable procedures in the Accomplishment Instructions of the alert service bulletin, except as provided by paragraph (n) of this AD.

(2) If the crack exceeds the limits described in the alert service bulletin and the alert service bulletin specifies to contact Boeing or if the alert service bulletin specifies to repair before further flight and contact the Boeing company: Repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative (AR) for the Boeing Delegation Option Authorization (DOA) Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(n) Where Figures 5 and 6 of the Accomplishment Instructions of the alert service bulletin specify code F, this AD requires operators to refer to code D in Figures 5 and 6 of the Accomplishment Instructions of the alert service bulletin.

Post Repair/Preventative Modification Inspections

(o) At the later of the times specified in paragraphs (o)(1) or (o)(2) of this AD, do the action specified in paragraph (p) of this AD.

(1) Within 40,000 flight cycles after doing the repair or preventative modification in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727-53-0198, dated January 11, 1990; or Revision 1, dated July 25, 1991; or the alert service bulletin. If a repair/preventative modification specified in the original or Revision 1 of the service bulletin has been done and additional repair/preventative modification actions specified in the alert service bulletin have also been done, the flight cycles must be counted from the first repair/preventative modification.

(2) Within 3,000 flight cycles after the effective date of this AD.

(p) At the time specified in paragraph (o) of this AD, do the inspections specified in paragraphs (p)(1) and (p)(2) of this AD in accordance with the Accomplishment Instructions of the alert service bulletin. If any crack is found, before further flight, do the repair specified in paragraph (m) of this AD.

(1) Do an HFEC inspection for cracks of the bear strap. Repeat the inspection thereafter at intervals not to exceed 20,000 flight cycles.

(2) Do a detailed inspection for cracks of any repair and preventative modification and its periphery. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

No Requirement to Contact Boeing

(q) Although paragraphs 3.B.9. and 3.B.10. of the Accomplishment Instructions of the alert service bulletin specify to contact Boeing after repairing cracks, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(r)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) The inspections specified in paragraphs (o) and (p) of this AD are approved as a method of compliance (MOC) to paragraph (g) of AD 98-11-03 R1, amendment 39-10983, for the inspections of Structurally Significant Items (SSI) F-13A and F-14A of Supplemental Structural Inspection Document (SSID), D6-48040-1, affected by the repair or modification. The MOC applies only to the areas inspected in accordance with the alert service bulletin. All provisions of AD 98-11-03 R1 that are not specifically referenced in paragraphs (r)(2) and (r)(3) of this AD remain fully applicable and must be complied with.

(3) For airplanes on which no repair or preventative modification has been done in accordance with Boeing Service Bulletin 727-53-0198, dated January 11, 1990; or Revision 1, dated July 25, 1991; or the alert service bulletin: The inspections and actions specified in paragraph (g) of this AD are approved as a MOC to paragraph (c) of AD 98-11-03 R1 for the inspections of SSI F-13A and F-14A of SSID, D6-48040-1. This MOC applies only to the areas inspected in accordance with the alert service bulletin. All other provisions of AD 98-11-03 R1 that are not specifically referenced in paragraphs (r)(2) and (r)(3) of this AD remain fully applicable and must be complied with.

Issued in Renton, Washington, on May 27, 2005.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 05-11708 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2005-21435; Directorate Identifier 2004-NM-163-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model DHC-8-401 and -402 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC-8-401 and -402 airplanes. This proposed AD would require a one-time inspection of the fuel and hydraulic tubes, and corrective actions if necessary. This proposed AD would also require modifying fairlead plate assemblies. This proposed AD is prompted by reports of chafing between fuel and hydraulic tubes and the fairlead plate where the tubes pass through the firewall. We are proposing this AD to prevent chafing of the fuel and hydraulic tubes, which could lead to fuel and/or hydraulic fluid leakage in the engine nacelle area and consequent fire or explosion.

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

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- By fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

You can examine the contents of this AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket

Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL-401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA-2005-21435; the directorate identifier for this docket is 2004-NM-163-AD.

FOR FURTHER INFORMATION CONTACT:

Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 256-7504; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-21435; Directorate Identifier 2004-NM-163-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC-8-401 and -402 airplanes. TCCA advises that service difficulty reports indicate that chafing of fuel and hydraulic tubes has been found at the fairlead plate where the tubes pass through the firewall. If the tubes are not centered in the fairlead plate, nacelle flexing can cause fouling or chafing damage to existing hydraulic and fuel pipes in the nacelle zone 3 area. This condition, if not corrected, could result in fuel and/or hydraulic fluid leakage in the engine nacelle area and consequent fire or explosion.

Relevant Service Information

Bombardier has issued Service Bulletin 84-54-09, Revision "B," dated June 15, 2004. The service bulletin describes procedures for inspecting the fuel and hydraulic tubes for nicks, dents, chafing, or damage, and doing corrective action if necessary. The service bulletin also describes procedures for modifying fairlead plate assemblies. The corrective action, if damage found during the inspections exceeds the limit specified as "Acceptable" in the service bulletin, includes reworking the tubes or replacing the tubes with new tubes. The service bulletin specifies that the compliance time for the corrective action is either 400 flight hours after the inspection, or before further flight, depending on the measurement of damage found. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF-2004-07, dated April 14, 2004, to ensure the continued airworthiness of these airplanes in Canada.

Bombardier Service Bulletin 84-54-09, Revision "B," dated June 15, 2004, refers to GKN Aerospace Services Service Bulletin 1-71-20, dated April 7, 2004, as an additional source of service information for modifying the fairlead plate assemblies. The GKN service bulletin is included in the Bombardier service bulletin.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral

airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Actions In the Proposed AD and Canadian Airworthiness Directive

Although Canadian airworthiness directive CF-2004-07 does not specify to do an inspection of the fuel/hydraulic tubes, the directive does specify to install Bombardier Modsum 4-113438 (modified fairlead plate assemblies) in accordance with Bombardier Service Bulletin 84-54-09. The inspection is included in the service bulletin and TCCA does intend for the inspection to be done as part of the modification. Therefore, this proposed AD would require an inspection of the fuel/hydraulic tubes and modification of the fairlead plate assemblies in accordance with the service bulletin.

Costs of Compliance

This proposed AD would affect about 18 airplanes of U.S. registry. The proposed actions would take about 4 work hours per airplane, at an average labor rate of \$65 per work hour. Required parts would cost about \$200 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$8,280, or \$460 per airplane.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA-2005-21435; Directorate Identifier 2004-NM-163-AD.

Comments Due Date

- (a) The Federal Aviation Administration must receive comments on this AD action by July 14, 2005.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Bombardier Model DHC-8-401 and -402 airplanes, serial numbers 4003 through 4089 inclusive, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of chafing between fuel and hydraulic tubes and the fairlead plate where the tubes pass through the firewall. We are issuing this AD to prevent chafing of the fuel and hydraulic tubes, which could lead to fuel and/or hydraulic fluid leakage in the engine nacelle area and consequent fire or explosion.

Compliance

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

Service Bulletin Reference

- (f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Bombardier Service Bulletin 84-54-09, Revision "B," dated June 15, 2004.

Inspection, Corrective Action, and Modification

- (g) For airplanes on which Bombardier Systems Drawings (SYD) 84-28-002 and SYD 84-29-006 have not been incorporated or on which Modsum 4-184081 and Modsum 4-184079 have not been incorporated: Within 500 flight hours after the effective date of this AD, do the actions specified in paragraph (i) of this AD.

- (h) For airplanes on which Bombardier SYD 84-28-002 and SYD 84-29-006 have been incorporated or on which Modsum 4-184081 and Modsum 4-184079 have been incorporated: Within 4,000 flight hours after the effective date of this AD, do the actions specified in paragraph (i) of this AD.

- (i) For airplanes identified in paragraphs (g) and (h) of this AD at the times specified in paragraphs (g) and (h) of this AD, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD in accordance with the service bulletin.

- (1) Do a general visual inspection of the fuel/hydraulic tubes for nicks, dents, chafing, or damage. If any nick, dent, chafing, or damage is found that is above the applicable limit specified as "Acceptable" in the service bulletin: Do the applicable corrective action in accordance with the service bulletin at the applicable time specified in the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

- (2) Modify the fairlead plate assemblies in accordance with the service bulletin.

Note 2: Bombardier Service Bulletin 84-54-09, Revision "B," dated June 15, 2004, refers to GKN Aerospace Services Service Bulletin 1-71-20, dated April 7, 2004, as an

additional source of service information for modifying the fairlead plate assemblies. The GKN service bulletin is included in the Bombardier service bulletin.

Actions Done According to Previous Issue of Service Bulletin

- (j) Actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 84-54-09, dated January 23, 2004; or Revision "A," dated April 22, 2004; are acceptable for compliance with the corresponding requirements of this AD.

Parts Installation

- (k) After the effective date of this AD, no person may install a plate, part number 85415048-107, 85415048-108, 85415087-107, or 85415087-108, on any airplane.

Alternative Methods of Compliance (AMOCs)

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

Related Information

- (m) Canadian airworthiness directive CF-2004-07, dated April 14, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on May 27, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-11709 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-105-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-20, DC-9-30, DC-9-40, and DC-9-50 Series Airplanes; Model DC-9-14, DC-9-15, and DC-9-15F Airplanes; Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) Airplanes; Model MD-88 Airplanes; and Model MD-90-30 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas transport category airplanes, that would have required an inspection

of the upper lock link assembly of the nose landing gear (NLG) to determine the manufacturer, repetitive eddy current inspections for cracking, and modification or replacement if necessary. That proposal also would have provided for optional terminating action for the repetitive inspections. This new action revises the proposed rule by adding new airplanes to the applicability and adding related concurrent actions. The actions specified by this new proposed AD are intended to prevent fracture of the upper lock link assembly of the NLG, which could result in failure of the NLG to extend following a gear-down selection, and consequent gear-up landing, structural damage, and possible injury to passengers and crew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 11, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-105-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002-NM-105-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Mike Lee, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5325; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-105-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-105-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas transport category airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 27, 2003 (68 FR 51518). That NPRM would have required an inspection of the upper lock

link assembly of the nose landing gear (NLG) to determine the manufacturer, repetitive eddy current inspections for cracking, and modification or replacement if necessary. That NPRM also would have provided for optional terminating action for the repetitive inspections. That NPRM was prompted by a report indicating that the flightcrew was unable to extend the nose landing gear (NLG) during landing due to a fractured upper lock link assembly of the NLG. That condition, if not corrected, could result in failure of the NLG to extend following a gear-down selection, and consequent gear-up landing, structural damage, and possible injury to passengers and crew.

Related AD

On February 11, 2002, we issued AD 2002-04-01, amendment 39-12658 (67 FR 7949, February 21, 2002), which is applicable to certain McDonnell Douglas Model DC-9, DC-9-80, and C-9 series airplanes; Model MD-88 airplanes; and Model MD-90 airplanes. Since the issuance of that AD, we have redesignated the applicability of certain airplanes to reflect the model designations as published in the most recent type certificate data sheets. That AD requires a visual check to determine the part and serial numbers of the upper lock link assembly of the NLG; repetitive inspections of certain upper lock link assemblies to detect fatigue cracking; and modification of the NLG. That AD also provides for terminating action for the repetitive inspections. McDonnell Douglas Service Bulletin DC9-32-315, dated March 11, 1999; Boeing Service Bulletin DC9-32-315, Revision 01, dated October 24, 2000; McDonnell Douglas Service Bulletin MD90-32-033, dated March 11, 1999; and Boeing Service Bulletin MD90-32-033, Revision 01, dated October 24, 2000; are referenced as appropriate sources of service information for accomplishing certain required actions.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Support for Original NPRM

Two commenters generally agree with the original NPRM.

Request to Reference Revision 01 of Boeing Alert Service Bulletin DC9-32A340

Several commenters state that Boeing Alert Service Bulletin DC9-32A340, Revision 01, dated April 29, 2003, has been issued. One commenter requests that Revision 01 of the service bulletin

be referenced instead of the original issue of the service bulletin, dated November 14, 2001. Another commenter requests that doing the proposed actions in accordance with Revision 01 of the service bulletin be considered an alternative method of compliance.

We agree with the commenters' request to reference Boeing Alert Service Bulletin DC9-32A340, Revision 01, dated April 29, 2003, as the appropriate source of service information for doing certain actions specified in the supplemental NPRM. The procedures in Revision 01 of the service bulletin are essentially the same as those in the original issue of the service bulletin. However, this supplemental NPRM has been changed from the original NPRM because of the following reasons:

- Revision 01 adds two airplanes to the applicability. We have revised the applicability statement of this supplemental NPRM to refer to Revision 01. We have also revised the Cost Impact section of the supplemental NPRM accordingly.

- We have added text to paragraph (a) of the supplemental NPRM to clarify that although the Accomplishment Instructions of the referenced service bulletins describe procedures for submitting certain information to the manufacturer, this supplemental NPRM would not require those actions. We do not need this information from operators.

- The original issue of the service bulletin refers to a "modification." However, for the same actions, Revision 01 of the service bulletin refers to "refinishing" an uncracked upper lock link assembly, related investigative actions, and corrective action if necessary. The related investigative actions include doing high frequency eddy current (HFEC) inspections for cracking of the upper lock link assembly, measuring link height for a 1.045-inches minimum, and doing a fluorescent dye penetrant inspection of the upper lock link assembly for cracking. The corrective action consists of replacing the upper lock link assembly with a serviceable upper lock link assembly. We have changed the language accordingly in paragraph (e) of the supplemental NPRM (specified as paragraph (d) of the original NPRM).

- Revision 01 of the service bulletin specifies that Boeing Service Bulletin MD90-32-033 is a concurrent requirement. McDonnell Douglas Service Bulletin MD90-32-033, dated March 11, 1999; and Boeing Service Bulletin MD90-32-033, Revision 01, dated October 34, 2000; are referenced as appropriate sources of service

information for accomplishing the actions required by AD 2002-04-01 for McDonnell Douglas MD-90 airplanes.

We have added these concurrent requirements to paragraph (f) of the supplemental NPRM.

- We have added a new paragraph (g) to the supplemental NPRM to state that actions accomplished according to the original issue of the service bulletin are acceptable for compliance with certain proposed requirements of this supplemental NPRM.

- We have added a new paragraph (h) to the supplemental NPRM to specify that certain parts must not be installed as of the effective date of this AD.

Request To Include Boeing Service Bulletin MD90-32A054

One commenter states that Boeing Service Bulletin MD90-32A054, Revision 01, dated April 29, 2003 (for Model MD-90-30 airplanes), was not included in the original NPRM. The commenter states the service bulletin covers the same topic as Boeing Alert Service Bulletin DC9-32A340, dated November 14, 2001 (which was cited as an appropriate source of service information for the actions proposed in the original NPRM for certain other models), and believes service bulletin MD90-32A054 may have been overlooked or may be part of future rulemaking.

We concur that Boeing Alert Service Bulletin MD90-32A054, Revision 01, dated April 29, 2003 (for Model MD-90-30 airplanes), addresses the same identified unsafe condition addressed by Boeing Alert Service Bulletin DC9-32A340, Revision 01, dated April 29, 2003 (for Model DC-9-20, DC-9-30, DC-9-40, and DC-9-50 series airplanes; Model DC-9-14, DC-9-15, and DC-9-15F airplanes; Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) airplanes; and Model MD-88 airplanes); which is cited as an appropriate source of service information for doing certain actions proposed by the supplemental NPRM for the applicable models. We have included Boeing Alert Service Bulletin MD90-32A054, Revision 01, dated April 29, 2003, in the supplemental NPRM as an appropriate source of service information for doing certain actions proposed by the supplemental NPRM for Model MD-90-30 airplanes.

We have also added Model MD-90-30 airplanes to the applicability of the supplemental NPRM, and we have revised the Cost Impact section of the supplemental NPRM accordingly. There are approximately 115 Model MD-90-30 airplanes in the worldwide fleet and 22 Model MD-90-30 airplanes of U.S.

registry that would be affected by the actions in Boeing Alert Service Bulletin MD90-32A054.

Request To Change Applicability

Two commenters request that the applicability in the original NPRM be changed from Model "DC-10-40" and "DC-10-50" to "DC-9-40" and DC-9-50." The commenters contend these are typographical errors.

We agree with the commenters that there are two typographical errors in the original NPRM. While the applicability statement of the original NPRM is correct, the preamble should have listed Models DC-9-40 and DC-9-50 instead of Models DC-10-40 and DC-10-50. We have corrected the models specified in the preamble of the supplemental NPRM accordingly.

Request To Remove Reference to an "F" Suffix

Several commenters request that the reference to an "F" suffix in paragraph (a) of the original NPRM be removed. The commenters state that parts identified with an "F" suffix are not manufactured by Ready Machine and Manufacturing Company. Two commenters point out that the Note in section 3.B.2. of Boeing Service Bulletin DC9-32A340, dated November 14, 2001, states that "upper lock link assemblies manufactured by Ready Machine and Manufacturing Company can be identified by the letter "RM" adjacent to the serial numbers" and that the "inspection also applies to existing parts identified with an "F" suffix per Service Bulletin DC9-32-315," which one commenter notes is already required by AD 2002-04-01.

We agree with the commenters and have removed the reference to "F" suffix from paragraph (b) of the supplemental NPRM (specified as paragraph (a) in the original NPRM). Only parts identified by the letters "RM" adjacent to the serial numbers are manufactured by Ready Machine and Manufacturing Company.

Request To Revise Wording in Paragraphs (b)(2) and (c)(2)

One commenter requests that the wording be revised in paragraphs (b)(2) and (c)(2) of the original NPRM by removing the phrase "modify or."

We agree with the commenter's request. If cracking is found, the upper lock link assembly cannot be modified, only replaced with a new or serviceable upper lock link assembly. We have consolidated the proposed requirements of paragraphs (b)(2) and (c)(2) of the original NPRM into paragraph (d) of the supplemental NPRM and revised

paragraph (d) of the supplemental NPRM accordingly.

Request To Allow Records Review

One commenter requests that a records review be allowed as an alternative to the visual inspection specified in paragraph (a) of the original NPRM. The commenter states that it tracks the upper lock link assembly by part number and serial number and would be able to determine if the part was manufactured by Ready Machine and Manufacturing Company.

We agree with the commenter that instead of the inspection specified in paragraph (b) of the supplemental NPRM (specified as paragraph (a) of the original NPRM), a review of airplane maintenance records is acceptable if the manufacturer of the upper lock link assembly can be positively determined from that review. We have revised paragraph (b) of the supplemental NPRM accordingly.

Request for Reason for Visual Inspection

One commenter requests that a reason be provided as to why the visual inspection, which has a compliance time of within 2,500 flight cycles, was included in the original NPRM. The commenter states that the service bulletin indicates that the HFEC inspection should be done within 2,500 flight cycles for Ready Machine and Manufacturing Company parts and within 3,500 flight cycles for parts that are not Ready Machine and Manufacturing Company parts. Therefore, the commenter states if it is known through a serial number data system that parts are not Ready Machine and Manufacturing Company parts, then the HFEC should be done within 3,500 flight cycles instead of within 2,500 flight cycles as required by the original NPRM.

We agree that clarification is needed. We added the inspection specified in paragraph (b) of the supplemental NPRM (specified as paragraph (a) of the original NPRM) in order to ensure the HFEC inspections specified in paragraphs (b)(1) and (b)(2) of the supplemental NPRM (specified as paragraphs (b) and (c) in the original NPRM) are done at the appropriate time. The service bulletin specifies different compliance times for the HFEC inspections based on the type of part. In order to address the identified unsafe condition at the appropriate time, it is necessary to first determine the type of part. As stated in the response to a previous comment, we have also added a records review as an option to doing the general visual inspection specified

in paragraph (b) of the supplemental NPRM.

Request To Extend Compliance Time

One commenter requests that the compliance time of the initial visual inspection and the HFEC inspection specified in paragraphs (a) and (b) of the original NPRM be extended from 2,500 flight cycles to 5,000 flight cycles. The commenter states that the new compliance time would align with the compliance time in AD 2002–04–01. The commenter notes that its request is based on no findings of a cracked upper lock link after inspections of 76 link assemblies.

We do not agree to extend the compliance times specified in paragraphs (b) and (b)(1) of the supplemental NPRM (specified as paragraphs (a) and (b) in the original NPRM). In developing an appropriate compliance time, we considered the urgency associated with the subject unsafe condition, the manufacturer's recommendation of inspecting Ready Machine and Manufacturing Company parts within 2,500 flight cycles, the availability of required parts, and the practical aspect of accomplishing the required inspections within a period of time that corresponds to the normal scheduled maintenance for most affected operators. In addition, the commenter did not provide sufficient data to substantiate that extending the compliance time would provide an acceptable level of safety. However, according to the provisions of paragraph (h) of the supplemental NPRM, we may approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety. No change to the supplemental NPRM is necessary in this regard.

Conclusion

Since certain changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 2,021 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,212 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed general visual inspection, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of the proposed general visual inspection on U.S. operators is

estimated to be \$78,780, or \$65 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed HFEC inspection, at an average labor rate of \$65 per work hour. Based on these figures, the cost impact of the proposed HFEC inspection on U.S. operators is estimated to be \$78,780, or \$65 per airplane, per inspection cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed replacement, if done, at an average labor rate of \$65 per work hour. Required parts would cost approximately \$6,346 for a new part. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be \$6,866 per airplane.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

TABLE 1.—APPLICABILITY

Model—	As Identified in—
DC-9-14, DC-9-15, DC-9-15F, DC-9-21, DC-9-31, DC-9-32, DC-9-32 (VC-9C), DC-9-32F, DC-9-33F, DC-9-34, DC-9-34F, DC-9-32F (C-9A, C-9B), DC-9-41, DC-9-51, DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) airplanes; and MD-88 airplanes.	Boeing Alert Service Bulletin DC9-32A340, Revision 01, dated April 29, 2003.
MD-90-30 airplanes	Boeing Alert Service Bulletin MD90-32A054, Revision 01, dated April 29, 2003.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the upper lock link assembly of the nose landing gear (NLG), which could result in failure of the NLG to extend following a gear-down selection, and consequent gear-up landing, structural damage, and possible injury to passengers and crew; accomplish the following:

Service Bulletin References

(a) The term “service bulletin,” as used in this AD, means the Accomplishment Instructions of the service bulletin specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Although the service bulletins referenced in this AD specify to submit information to the manufacturer, this AD does not include such a requirement.

(1) For Model DC-9-14, DC-9-15, DC-9-15F, DC-9-21, DC-9-31, DC-9-32, DC-9-32 (VC-9C), DC-9-32F, DC-9-33F, DC-9-34, DC-9-34F, DC-9-32F (C-9A, C-9B), DC-9-41, DC-9-51, DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) airplanes; and MD-88 airplanes: Boeing Alert Service Bulletin DC9-32A340, Revision 01, excluding Appendix A, dated April 29, 2003; and

(2) For Model MD-90-30 airplanes: Boeing Alert Service Bulletin MD90-32A054, Revision 01, excluding Appendix A, dated April 29, 2003.

Inspections

(b) Within 2,500 flight cycles after the effective date of this AD: Do a general visual inspection to determine if the upper lock link assembly of the NLG was manufactured by Ready Machine and Manufacturing Company (this can be identified by the letters “RM”

adjacent to the serial number), in accordance with the service bulletin. Instead of the inspection, a review of airplane maintenance records is acceptable if the manufacturer of the upper lock link assembly can be positively determined from that review.

Note 1: For the purposes of this AD, a general visual inspection is: “A visual examination of an interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked.”

(1) If the upper lock link assembly of the NLG was manufactured by Ready Machine and Manufacturing Company: Within 2,500 flight cycles after the effective date of this AD, do a high frequency eddy current (HFEC) inspection of the assembly for cracking, in accordance with Condition 1 of the service bulletin.

(2) If the upper lock link assembly was not manufactured by Ready Machine and Manufacturing Company: Within 3,500 flight cycles after the effective date of this AD, do a HFEC inspection of the assembly for cracking, in accordance with Condition 2 of the service bulletin.

No Cracking Found

(c) If no cracking is found during any HFEC inspection required by paragraph (b) of this

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2002-NM-105-AD.

Applicability: This AD applies to airplanes, certificated in any category, as identified in Table 1 of this AD.

AD, repeat the HFEC inspection specified in paragraph (b) of this AD at intervals not to exceed 4,000 flight cycles until accomplishment of either paragraph (e)(1) or (e)(2) of this AD.

Cracking Found

(d) If any cracking is found during any inspection required by paragraph (b) or (c) of this AD, before further flight, do the replacement of the upper lock link assembly specified in either paragraph (e)(1) or (e)(2) of this AD. Accomplishment of this action constitutes terminating action for the requirements of this AD.

Optional Terminating Action

(e) Doing the actions specified in either paragraph (e)(1) or (e)(2) of this AD constitutes terminating action for the requirements of this AD.

(1) Replace the upper lock link assembly of the NLG with an upper lock link assembly modified in accordance with the service bulletin. The modification includes refinishing an uncracked upper lock link assembly, and doing related investigative and corrective actions, in accordance with the service bulletin.

(2) Replace the cracked upper lock link assembly of the NLG with a new or serviceable upper lock link assembly in accordance with the service bulletin.

Prior or Concurrent Actions Required to Be Done With Paragraph (b) of This AD

(f) Before or concurrent with the actions required by paragraph (b)(1) or (b)(2) of this AD, as applicable, do the actions specified in Table 2 of this AD.

TABLE 2.—PRIOR OR CONCURRENT ACTIONS

Do These Actions—	Required by—	In Accordance with—
Replace the lock link with a new upper lock link, a reidentified upper lock link, or a new upper lock link assembly, and do any applicable inspections.	AD 2002–04–01, amendment 39–12658.	McDonnell Douglas Service Bulletin DC9–32–315, dated March 11, 1999, or Boeing Service Bulletin DC9–32–315, Revision 01, dated October 24, 2000; or McDonnell Douglas Service Bulletin MD90–32–033, dated March 11, 1999, or Boeing Service MD90–32–033, Revision 01, dated October 24, 2000; as applicable.

Actions Accomplished In Accordance with Previous Issues of Service Bulletins

(g) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin DC9–32A340; and Boeing Alert Service Bulletin MD90–32A054; both excluding Appendix A, both dated November 14, 2001; are considered acceptable for compliance with the corresponding actions specified in this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install, on any airplane, any part specified in paragraphs (h)(1) and (h)(2) of this AD, unless it has been modified according to the service bulletin.

(1) Any upper lock link assembly, part number 5965065–1, 5965065–501, 5965065–503, or 5965065–507.

(2) Any upper lock link, part number 3914464–1, 3914464–501, 3914464–503, or 3914464–507.

Alternative Methods of Compliance

(i) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on May 27, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11710 Filed 6–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Federal Aviation Administration Flight Information Services (FIS) Policy Statement

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

ACTION: Notice of policy statement; request for comment.

SUMMARY: This statement summarizes the major changes and the implications of publishing the revised policy, and background on the need for a revised policy.

The revised FIS Policy updates the existing 1998 FAA Airborne FIS Policy to reflect the current FIS data link status and provides the basis for transition from the current (FAA) industry Flight Information Services Data Link (FISDL) service to the planned evolution of an FAA FIS data link service using National Airspace System (NAS) technologies such as the Universal Access Transceiver (UAT) and/or Next Generation Air-Ground Communication (NEXCOM). During the transition, the revised FIS Policy supports continuation of the FISDL service by temporarily extending the current use of VHF channels through FAA-industry agreement.

In 1998 the FAA Administrator published the current Airborne Flight Information Services Policy Statement (see attachment). That policy provided the basis for implementing the existing FISDL service through FAA-industry agreement. Under the agreement, FAA provides two VHF frequencies and management oversight while industry (Honeywell) provides the FISDL network and cockpit products. In 2002 the FAA published the Automatic Dependent Surveillance-Broadcast (ADS–B) Link Decision which includes providing FIS–B services via the UAT network. The Safe Flight 21 program is developing the ADS–B technology and has installed a “pocket” UAT network along the East Coast.

The major purpose for publishing the revised FIS Policy is to establish a strategy for transitioning from the existing industry-government FIS data link service to one or more FAA-only FIS data link services. The existing industry-government service, called FIS Data Link (FISDL), is owned and operated by Honeywell Inc. The replacement FAA-only system(s) will be the Universal Access Transceiver (UAT) and/or NEXCOM. During the transition to an FAA FIS data link service, the FAA will provide temporary extension of two VHF channels for continuation of the FISDL service.

DATES: Comments must be received by June 30, 2005.

ADDRESSES: Send all comments on the proposed policy to the individual

identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sandra Schmidt, Weather Policy and Standards, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number (202) 385–7709; Fax: (202) 385–7701; e-mail: Sandra.Schmidt@faa.gov. Internet address: <http://www.Sandra.Schmidt@faa.gov>.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested parties to comment on the proposed policies. Comments should identify the subject of the proposed policy and be submitted to the individual identified under the **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all comments received by the closing date before issuing the final policies.

Background

After the cancellation of the Mode S Data Link Processor in the mid-1990's, the FAA had no definite plans for providing FIS data link services. Industry providers and users urged the FAA to work with industry to facilitate early implementation of FIS data link services. As a result, in May 1998 the FAA published the current FISDL policy. It provided the basis for implementing the existing FIS Data Link (FISDL) service through a Government-Industry Project Performance Agreement (G–IPPA) with Honeywell.

In July 2002, the FAA issued the ADS–B Link Decision that included FIS broadcast (FIS–B) as a NAS service using the Universal Access Transceiver (UAT) technology. In 2004, the FAA Safe Flight 21 program began installing a UAT network “pocket” along the East Coast that includes initial FIS–B services.

The basic national FISDL network was completed during 2004. Also, the G–IPPA between the FAA and Honeywell has been extended to provide continuity of service during the development of the strategy for transition to an FAA FIS–B service. The revision to the FIS Policy establishes the provisions for further extending the

FISDL service and aligns the FIS Policy with the ADS-B Link Decision.

Airborne Flight Information Services Policy

This policy statement replaces the Administrator's Airborne Flight Information Services (FIS) Policy Statement, dated May 1, 1998, and affirms FAA's objective to encourage the evolution of FIS data link services.

FIS is defined as the non-control, advisory information needed by pilots to operate more safely and efficiently within the National Airspace System (NAS). FIS includes weather and airspace status information applicable for preflight planning and en route decision-making. The FAA seeks to use digital data link technology to provide FIS information in a timely manner directly to the pilot, thereby enhancing flight safety and efficiency as well as increasing the general utility, efficiency, and capacity of the NAS. The timely provision of current and consistent FIS information is essential to support sound operational decisions by all NAS users.

FIS product for delivery to the cockpit include text and/or graphic presentations of information on the status of the NAS (e.g., Notices to Airmen, Temporary Flight Restrictions, Special Use Airspace) and meteorological information. This policy supports the inherent efficiency of providing FIS through automated data communications to complement voice communications.

The FAA policy is to promote all modes of FIS delivery appropriate for aviation use whether provided commercially or over the evolving FAA data link communications. This policy is consistent with FAA's Automatic Dependent Surveillance-Broadcast (ADS-B) Data Link Decision of July 1, 2002. Under the ADS-B Link Decision, the FAA chose to provide future FIS-Broadcast (FIS-B) services through the Universal Access Transceiver (UAT) 978MHz network; additional details are available at the FAA Web site (<http://www.faa.gov/asd/ads-b/>). Any transition to the UAT network will include an orderly phase-out of the existing Government-Industry Project Performance Agreement (G-IPPA) that set aside segments of the VHF spectrum for the broadcast of FIS. The FAA intends to temporarily extend the current VHF channels for FIS data link (FISDL) use during transition to a national UAT on 978 MHz and/or Next Generation Air/Ground Communications (NEXCOM) based FIS data link service. The current VHF spectrum supporting FISDL is required

for future airspace redesign requirements. Avionics based on the current VHF channels supporting FISDL will no longer receive FIS data when the VHF spectrum supporting this data link is no longer available.

FAA encourages public and private collaboration to provide users with new and affordable FIS products; and to offer opportunities for industry to participate in FIS product development, production and dissemination. The FAA also supports the evolution and use of private sector FIS data link capabilities using alternative media, such as satellite broadcast.

The FAA recognizes that effective pilot training is a critical element in the responsible use of FIS data link services. When used responsibly, FIS information can materially enhance a pilot's overall situational awareness and thus contribute to enhanced pilot judgment and better pilot decision-making. To ensure the maximum benefits from FIS data link services, the FAA encourages manufacturers to develop, and users (e.g., pilots and operators) to make use of appropriate training materials.

Under the framework provided by this policy statement, the roles and responsibilities of the government, industry, and the users are as follows:

Government

- Plans to develop and deploy an FAA FIS data link service using evolving NAS technologies, such as UAT and NEXCOM.
- Will temporarily extend the current use of VHF channels for FIS data link service through the existing government-industry agreement until transition to the above FAA service.
- Will work with other Government agencies, users, and industry to develop guidelines and standards for the display and training associated with the use of FIS products in the cockpit.
- Will make appropriate NAS status and Federal meteorological data accessible to aeronautical users and service providers.
- May acquire commercially developed and produced FIS products.
- Will lead and coordinate the establishment of certification and operational approval criteria, and national and international standards for delivery of FIS via data link; thereby promoting interoperability between various FIS providers, products and equipment suites.

Industry

- Will manufacture avionics for the processing and display of FIS products in the cockpit.

- May develop FIS products and/or deploy commercial networks for delivery of FIS data link services.
- Will develop pilot education and training materials and encourage their use, as well as assist the FAA in the publication of appropriate directives.

Users

- Will select their preferred FIS data link service from FAA and/or the marketplace, and will acquire the appropriate data link equipment.
- Will complete appropriate training and use FIS data link equipment and products in a responsible manner as described in FAA and industry publications.

Issued in Washington, DC, on May 31, 2005.

Richard J. Heuwinkel,

Manager, Weather Policy and Standards.

[FR Doc. 05-11670 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM05-17-000]

Information Requirements for Available Transfer Capability

May 27, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission seeks comments on: (a) The North American Electric Reliability Council's recent Long-Term AFC/ATC Task Force Report; (b) the advisability of revising and standardizing available transfer capability calculations; and (c) the most expeditious way to obtain an industry-wide standard for available transfer capability calculations. This Notice of Inquiry is the result of a review conducted by the Commission's Information Assessment Team (FIAT), to propose: (a) new information the Commission needs to promote greater market transparency in electricity markets; and (b) ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current information collections.

DATES: Comments on this Notice of Inquiry are due on August 15, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the

Commission's web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC, 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

Michelle Veloso (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. michelle.veloso@ferc.gov.
Edward Fowlkes (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. edward.fowlkes@ferc.gov.
Joseph C. Lynch (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. joseph.lynch@ferc.gov.

SUPPLEMENTARY INFORMATION:

Notice of Inquiry

1. In Order No. 889,¹ the Commission required transmission providers² to offer unused transmission capacity to the market by posting available transfer capability (ATC) on their Open Access Same-Time Information Systems (OASIS).³ In the years since the Commission issued Order No. 889, market participants have complained

¹ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, 61 FR 21,737 (1996), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,035 (1996), *order on reh'g*, Order No. 889–A, 62 FR 12,484 (1997), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,049 (1997), *reh'g denied*, Order No. 889–B, 81 FERC ¶ 61,253 (1997).

² A transmission provider is the public utility (or its Designated Agent) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Tariff. *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,036 Appendix D (Pro Forma Tariff) at 1.46 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12,274 (March 4, 1997), FERC Stats. & Regs., Regulations Preambles July 1996–December 2001 ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (Order No. 888).

³ 18 CFR Part 37.

that variations in the way ATC is calculated provide opportunities for undue discrimination and create obstacles to doing business. The Commission believes that standardizing the way ATC is calculated will alleviate these obstacles. This Notice of Inquiry is the result of a review conducted by the Commission's Information Assessment Team (FIAT), to propose: (1) New information the Commission needs to promote greater market transparency in electricity markets; and (2) ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current information collections.

2. The Commission has reviewed the final report of the North American Electric Reliability Council (NERC) on long-term available flowgate capability (AFC) and ATC,⁴ which addresses the calculation and coordination of AFC/ATC to increase market liquidity and enhance reliability. As discussed more fully below, NERC's LTATF Report provides useful guidance on how to achieve an industry-wide methodology for calculating ATC. The Commission encourages the electricity industry to work toward standardization and coordination of ATC and related terms, and requests comments on the recommendations put forth in the LTATF Report.⁵

Background

A. Definitions

3. The calculation of ATC involves a number of variables that require definition. The Commission will use the LTATF Report definitions for purposes of the discussion in this Notice of Inquiry. The Commission requests, however, that the industry comment on these definitions, as these variables determine the calculation of ATC.

4. For market participants, ATC is essentially a measure of unused transmission that a transmission provider can offer for sale pursuant to Order Nos. 888 and 889. Transmission providers sell transmission service to customers in the form of transfer capability. Transfer capability is the measure of the ability of the interconnected electrical system to move electric energy reliably from one point to another and is limited by, among other things, the capacity either

of equipment (such as transformers or transmission circuits) or interfaces (one or more circuits). ATC is the amount of transfer capability still available for sale after all existing uses are accounted for.⁶ Transmission providers calculate ATC by subtracting existing transmission commitments, transmission reserve margin, and capacity benefit margin from total transfer capability.⁷

5. A flowgate is the name given to a transmission element(s) and associated contingencies that may limit ATC. AFC is a measure of the capability remaining on a flowgate for future uses, after considering the effect of prior sales. AFC is measured as a flow limit on a flowgate, while ATC is measured as a transaction limit from a source to a sink.⁸

6. There may be multiple flowgates between source and sink that can limit a transaction. If the assumptions that underlie AFC and ATC do not reasonably conform to real-time operations, the transmission system will either be artificially constrained, or it will be underused, leading to lost transmission opportunities.

7. Transmission providers use CBM and TRM in their ATC and AFC calculations to account for uncertainties or contingencies that are not explicitly modeled in the calculations. CBM is the amount of firm transmission transfer capability reserved by the transmission provider so that load serving entities, whose loads are located on that transmission provider's system, can access remote reserve generation from interconnected systems.⁹ TRM is the amount of transmission transfer capability necessary to ensure that the interconnected transmission network will be secure under a reasonable range of uncertainties in system conditions. The criteria used to determine TRM and CBM should be consistent with the transmission operator's planning and operating criteria.¹⁰

B. Evolution of Electricity Markets Since Order Nos. 888 and 889

8. In Order Nos. 888 and 889, the Commission required transmission providers to sell unused transmission capacity and post their ATC on OASIS. Market transactions depend on this

⁶ LTATF Report, Appendix A, page 4.

⁷ ATC equals Total Transfer Capability (TTC) minus Existing Transmission Commitments (ETC) minus Transmission Reserve Margin (TRM) minus Capacity Benefit Margin (CBM), or ATC=TTC–ETC–TRM–CBM.

⁸ "Source" and "sink" are points at which the transmission of electric energy begins (source) and ends (sink).

⁹ LTATF Report, Appendix F, page 2.

¹⁰ *Id.* at Appendix A, page 5.

critical transmission information. As the electric industry has evolved, the nature of the calculations of ATC, TTC, TRM and CBM and the interaction between neighboring transmission providers has changed substantially. In the years since the Commission established OASIS, independent system operators (ISOs) and regional transmission organizations (RTOs) have developed organized markets. Agreements among neighboring ISOs/RTOs and transmission service providers have led to increased coordination of operation and requests for transmission service, and have resulted in fewer variations in the calculation of ATC for those regions. In regions without an ISO/RTO, however, this may not be the case.

9. While the electric industry uses OASIS for posting ATC, there is as yet no industry-wide standard for calculating ATC. The Commission's OASIS II Advanced Notice of Proposed Rulemaking, issued in July 2000, contemplated detailed, standard communication protocols and associated business practices for ATC, TTC, and CBM¹¹ but these standards and protocols are not yet in place.

C. Problems With ATC Calculations

10. Transmission providers have incentives to understate ATC on those paths valuable to power sellers that are competitors to a transmission provider's own (or its affiliate's) power sales. The lack of clear and consistent methodologies for calculating ATC can allow transmission providers the discretion to control the transmission system to favor their own power sales or those of their affiliates. ATC can vary considerably depending on the criteria they use to calculate it and the order in which the calculations are made. Although the Commission has required transmission providers to post the formula for calculating ATC,¹² the transmission provider has sole responsibility for, and a great deal of discretion in, its calculation. More rigorous and consistent standards and procedures for ATC calculations would help ensure that transmission providers' exercise of discretion in their calculation of ATC does not result in undue discrimination with respect to interstate transmission.

11. Complainants have alleged that transmission providers misrepresent ATC, often using ATC calculations to inflate transmission needed to serve native load or to set aside capacity for their affiliates. In one instance, a

transmission provider reserved capacity on behalf of native load but failed to designate network resources as required by the open access transmission tariff. The company thus improperly increased the existing transmission commitment component of the ATC calculation, artificially reducing posted ATC.¹³ It is thus important that the ATC component (TRM and CBM) assumptions are stated and posted so that recalculated ATC values are transparent and not devised to produce an unduly discriminatory result.

12. The lack of standardization and coordination of ATC can not only result in unduly discriminatory behavior, but can also on occasion affect reliability. As the LTATF recognized, inaccurate ATC values can lead to Transmission Loading Relief actions [or curtailments in the Western Electricity Coordinating Council (WECC)] if they result in transmission flows that exceed line limits.¹⁴ In this regard, preceding the August 14, 2003 blackout, transmission operators calculated ATC values approximately seven days ahead using forecasted system conditions. This lag in real-time ATC values contributed to the blackout. The Final Blackout Report indicated that transmission operators should update ATC/TTC values as the forecast of system conditions changes.¹⁵

D. The LTATF Report

13. NERC created the LTATF to develop a report and specific recommendations for the calculation and coordination of AFC/ATC to increase market liquidity and enhance reliability. NERC's Market Committee directed the LTATF efforts and the LTATF also coordinated its efforts with representatives from the North American Energy Standards Board (NAESB). The LTATF Report builds upon NERC's "Version 0" reliability standards, which the Commission incorporated into its *Policy Statement on Matters Related to Bulk Power System Reliability* in February 2005.¹⁶ The Version 0 reliability standards attempt to state reliability goals clearly and provide a means by which to

measure the progress toward their attainment. The Commission's *Supplement to the Policy Statement* makes clear that the term Good Utility Practice as used in the open access transmission tariff (OATT) includes compliance with NERC's Version 0 reliability standards.¹⁷

14. The LTATF Report outlines existing ATC practices in the Eastern Interconnection and the WECC. It also proposes a method of exchanging AFC/ATC data between entities and summarizes the minimum requirements of modeling techniques to facilitate proper calculation and coordination of AFC/ATC.

15. The LTATF Report details three groups of issues: (1) Communication and coordination of AFC/ATC; (2) calculation process for AFC/ATC; and (3) consistency between planning criteria and the attributes of AFC/ATC calculations (over both planning and operating horizons).

Communication and Coordination of AFC/ATC—Respecting Third Party Constraints

16. The objective of AFC/ATC coordination is to ensure that neighboring entities exchange relevant information to facilitate: (a) A reasonable representation of external entities for modeling purposes; (b) the ability of each calculator¹⁸ to adequately represent the values of flowgates on third party transmission systems; and (c) the ability of each calculator to translate data from neighboring entities and make meaningful use of the data in its calculations.

17. The LTATF documented the existing coordination processes for the major regions in the Eastern Interconnection and the WECC. The report proposes a method of exchanging AFC/ATC data between entities and provides the minimum requirements for flowgate exchange and modeling techniques needed to ensure proper calculation and coordination of transfer capability.

Calculation Process for AFC/ATC

18. The LTATF agreed that transmission service providers need to provide better documentation and greater transparency for their AFC/ATC calculation processes. The LTATF Report contains a number of recommendations to achieve more consistency among AFC/ATC calculations.

¹¹ Open Access Same-Time Information System Phase II, 92 FERC ¶ 61,047 at 61,126–27 (2000).

¹² 18 CFR 37.6.

¹³ See *Aquila Power Corporation v. Entergy Services, Inc.*, 90 FERC ¶ 61,260 at 61,859–60 (2000).

¹⁴ LTATF Report, page 1.

¹⁵ U.S.-Canada Power System Outage Task Force, *Final Report on the August 14th Blackout in the United States and Canada: Causes and Recommendations* 31 (April 2004) (Final Blackout Report).

¹⁶ *Supplement to Policy Statement on Matters Related to Bulk Power System Reliability*, 110 FERC ¶ 61,096 (2005) (Supplement); see *Policy Statement on Matters Related to Bulk Power System Reliability*, 107 FERC ¶ 61,052 (Policy Statement), clarified, 108 FERC ¶ 61,288 (2004).

¹⁷ Supplement at P 23. Version 0 Standards MOD 001–0 through 009–0 are specifically relevant here.

¹⁸ The calculator prepares and updates ATC values for the transmission provider.

19. The LTATF proposed a Standard Authorization Request (SAR) that contains recommendations to achieve more consistency among AFC/ATC calculations. The SAR would change the existing modeling standard(s) by adding a requirement for transmission providers to coordinate the calculation of ATC and incorporate specific reliability practices into the ATC calculation and coordination methodologies.¹⁹

20. The LTATF found that the way in which various regions calculate and use ATC, TTC, TRM and CBM varies widely.²⁰ As the LTATF Report explains, some transmission providers first calculate TTC, and then derive ATC. Others first calculate ATC, and then derive TTC. Some transmission providers first calculate AFC, and then derive ATC. Some only calculate TTC. Some transmission providers use CBM; some do not use CBM. The scope of CBM varies by footprint. Nearly all transmission providers use TRM.²¹

21. The LTATF noted that consistency is important in the calculation of CBM and TRM and recommended revising applicable standards. The LTATF proposed a SAR to modify the current methodology for calculating CBM and TRM.²²

22. The LTATF also used the LTATF Report and recommendations to develop a proposed NAESB business practice standard. The LTATF Report proposes that a single business practice standard be developed related to both: (a) The processing and evaluation of transmission service requests which use TTC/ATC/AFC and CBM/TRM; and (b) the processing and evaluation of requests to schedule against approved transmission service reservations.²³

Consistency Between Planning Criteria and the Attributes of the AFC/ATC Calculations (Over Both Planning and Operating Horizons)

23. The LTATF emphasized that the assumptions used in the calculation of AFC/ATC and CBM/TRM should be consistent with those used in the planning and operating horizons. The LTATF noted that transmission service providers should document these calculations and make them transparent

to all who use the transmission network.²⁴

24. The LTATF suggested that transmission providers ensure consistency between their ATC calculations and their internal planning processes. For example, the LTATF recommended that both the internal planning processes and the ATC calculations reflect the same counterflows and the same components of TRM. Discrepancies between the internal planning processes and ATC calculations can result in inaccurate calculations of transmission available to the market.²⁵

Discussion

25. As noted above, problems in the way AFC and ATC are calculated can create and have created obstacles to ensuring that the provision of interstate transmission service is not unduly discriminatory or preferential. The Commission believes that standardizing the way AFC and ATC are calculated will help mitigate this potential, and enhance system performance.

26. The LTATF Report contains proposals that appear to go a long way toward refining and standardizing these calculations. By developing a business practice standard and revisions related to reliability standards, the LTATF Report would also take such calculations beyond NERC's Version 0 reliability standards.

27. NERC also has long encouraged regions to promote a common methodology for determining TRM and CBM.²⁶ Appendix C to the LTATF Report²⁷ recommends that the regions adopt written regional methodologies for calculating CBM and TRM. The LTATF Report also sets forth areas in which CBM and TRM standards could be more specific. The Commission requests comments on these recommendations and whether they go far enough in promoting a common TRM and CBM methodology within each region. The Commission also invites comments on whether there should be common TRM and CBM methodologies among regions.

28. More specifically, the Commission seeks industry comment on: (a) The definitions of AFC, ATC, CBM and TRM used in this order; (b) the advisability of revising and standardizing AFC, ATC, TRM and CBM values; (c) the advisability of developing

interconnection-wide standards for the Eastern Interconnection and the WECC; (d) the contents of the LTATF Report; and (e) the most expeditious way to obtain industry-wide standards for ATC calculations.

29. While the LTATF Report is a start, the Commission recognizes that more work is needed before there can be industry-standard AFC and ATC calculations.

The Commission notes that the LTATF coordinated its efforts with NAESB and applauds NERC's efforts to work with NAESB in developing comprehensive business practice and reliability standards. The Commission urges that these efforts continue.

Comment Procedures

30. The Commission invites interested persons to submit comments on these matters and any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 15, 2005. Comments must refer to Docket No. RM05-17-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

31. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: The Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC, 20426.

32. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters commenting on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

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

¹⁹ LTATF Report, Attachment A, SAR-1.

²⁰ LTATF Report at page 3.

²¹ *Id.* at page 2. The LTATF reviewed ATC methodologies and found that the numerous ATC calculators in the Midwest have been replaced by the Midwest Independent Transmission System Operator and the PJM Interconnection, LLC. The LTATF found 50 to 60 ATC calculators nationwide, with most of those in the West (30 to 40). *Id.* at page 3.

²² *Id.* at Attachment B, SAR-1.

²³ *Id.* at Attachment C, page 2.

²⁴ *Id.* at page 3.

²⁵ *Id.* at, Appendix E, page 2.

²⁶ See *North American Electric Reliability Council, Transmission Capability Margins and Their Use in ATC Determination* 3 (1999).

²⁷ Appendix C is entitled: Review of Current NERC Standards on CBM and TRM.

34. From the Commission's Home Page on the Internet, this information is available in its eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

35. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202) 502-8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov or (202) 502-8371.

By direction of the Commission.

Linda Mitry,

Deputy Secretary.

[FR Doc. 05-11530 Filed 6-13-05; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM05-2-000]

Order Reaffirming Discount Policy and Terminating Rulemaking Proceeding

June 7, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Reaffirming Discount Policy and Terminating Rulemaking Proceeding.

SUMMARY: On November 22, 2004, the Federal Energy Regulatory Commission (Commission) issued a Notice of Inquiry (NOI) seeking comments on its policy regarding selective discounting by natural gas pipeline companies. The Commission has determined that it will take no further action in this proceeding and, therefore, it terminated Docket No. RM05-2-000.

DATES: The termination of this docket is made on June 14, 2005.

FOR FURTHER INFORMATION CONTACT: Ingrid Olson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502-8406. ingrid.olson@ferc.gov

SUPPLEMENTARY INFORMATION:

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

Policy for Selective Discounting by Natural Gas Pipelines

Issued May 31, 2005

1. On November 22, 2004, the Commission issued a Notice of Inquiry (NOI) seeking comments on its policy regarding selective discounting by natural gas pipeline companies.¹ The Commission asked parties to submit comments and respond to specific inquiries regarding whether the Commission's practice of permitting pipelines to adjust their ratemaking throughput downward in rate cases to reflect discounts given by pipelines for competitive reasons is appropriate when the discount is given to meet competition from another natural gas pipeline. The Commission also sought comments on the impact of its policy on captive customers and on what changes to the policy could be considered to minimize any impact on captive customers. Comments and responses to the inquiries were filed by 40 parties.

2. As discussed below, after reviewing the comments, the Commission finds that its current policy on selective discounting is an integral and essential part of the Commission's policies furthering the goal of developing a competitive national natural gas transportation market. The Commission further finds that the selective discounting policy provides for safeguards to protect captive customers. If there are circumstances on a particular pipeline that may warrant special consideration or additional protections for captive customers, those issues can be considered in individual cases. This order is in the public interest because it promotes a competitive natural gas market and also protects the interests of captive customers.

Background

3. In the NOI, the Commission detailed the background and development of the selective discount policy. As explained in the NOI, in providing for open access transportation in Order No. 436, the Commission adopted regulations permitting pipelines to engage in selective discounting based on the varying demand elasticities of the pipeline's customers.² Under these regulations, the pipeline is permitted to discount, on a nondiscriminatory basis, in order to meet competition. For example, if a fuel-switchable shipper were able to obtain an alternate fuel at a cost less

than the cost of gas including the transportation rate, the Commission's policy permits the pipeline to discount its rate to compete with the alternate fuel, and thus obtain additional throughput that otherwise would be lost to the pipeline. In Order No. 436, the Commission explained that these selective discounts would benefit all customers, including customers that did not receive the discounts, because the discounts would allow the pipeline to maximize throughput and thus spread its fixed costs across more units of service. The Commission further found that selective discounting would protect captive customers from rate increases that would otherwise ultimately occur if pipelines lost volumes through the inability to respond to competition.

4. Further, in the 1989 Rate Design Policy Statement,³ the Commission held that if a pipeline grants a discount in order to meet competition, the pipeline is not required in its next rate case to design its rates based on the assumption that the discounted volumes would flow at the maximum rate, but may reduce the discounted volumes so that the pipeline will be able to recover its cost of service. The Commission explained that if a pipeline must assume that the previously discounted service will be priced at the maximum rate when it files a new rate case, there may be a disincentive to pipelines discounting their services in the future to capture marginal firm and interruptible business. In order to obtain a discount adjustment in a rate case, the pipeline has the ultimate burden of showing that its discounts were required to meet competition. The policy of permitting discount adjustments is consistent with the discussion of the court in *Associated Gas Distributors v. FERC (AGD I)*⁴ suggesting that discount adjustments should be permitted.

5. In Order No. 636, the Commission began to move away from the monopolistic selective discounting model to a competitive model,

³ Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295, reh'g granted, 48 FERC ¶ 61,122 (1989).

⁴ 824 F.2d 981, 1012 (D.C. Cir. 1987). As explained in the NOI, the court addressed an argument presented by some pipelines that the Commission's policy permitting pipelines to offer discounts to some customers, might lead to the pipelines under-recovering their costs. The court set forth a numerical example showing that the pipeline could under-recover its costs, if, in the next rate case after a pipeline obtained throughput by giving discounts, the Commission nevertheless designed the pipeline's rates based on the full amount of the discounted throughput, without any adjustment. However, the court found no reason to fear that the Commission would employ this "dubious procedure," and accordingly rejected the pipelines' contention.

¹ 109 FERC ¶ 61,202 (2004).

² See *Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs., Regulations Preambles (1982-1985) ¶ 30,665 at 31,543-45 (1985).

particularly for the secondary market. The institution of capacity release created competition between shippers and the pipeline with respect to unused capacity. Thus, competition from capacity release requires pipelines to discount their interruptible and short-term firm capacity.

6. Since *AGD I* and the Rate Design Policy Statement, the issue of “gas-on-gas” competition, *i.e.*, where the competition for the business is between pipelines as opposed to competition between gas and other fuels, has been raised in several Commission proceedings.⁵ In these proceedings, certain parties have questioned the Commission’s rationale for permitting selective discounting, *i.e.*, that it benefits captive customers by allowing fixed costs to be spread over more units of service. These parties have contended that, while this may be true where a discount is given to obtain a customer who would otherwise use an alternative fuel and not ship gas at all, it is not true where discounts are given to meet competition from other gas pipelines. In the latter situation, these parties have argued, gas-on-gas competition permits a customer who must use gas, but has access to more than one pipeline, to obtain a discount. But, if the two pipelines were prohibited from giving discounts when competing with one another, the customer would have to pay the maximum rate to one of the pipelines in order to obtain the gas it needs. This would reduce any discount adjustment and thus lower the rates paid by the captive customers.

7. In *Southern Natural Gas Co.*,⁶ the Commission rejected the argument made by one of Southern’s customers that no discount adjustment should be permitted with respect to gas-on-gas competition. The Commission stated, “in light of the dynamic nature of the natural gas market, the Commission believes any effort to prohibit interstate gas pipelines from discounting to meet gas-on-gas competition would inevitably result in a loss of throughput to the detriment of all their customers.”⁷ The Commission explained that the pipeline

faced competition from intrastate pipelines not subject to the Commission’s jurisdiction, so that the Commission could not prohibit gas-on-gas competition altogether. The Commission also stated that discounts given to meet gas-on-gas competition are not readily distinguishable from discounts given to meet competition from alternative fuels.⁸

8. The NOI sought comments from the parties on the effect of the current policy on captive customers, whether the Commission should eliminate the discount adjustment for discounts to meet gas-on-gas competition, and whether the Commission should consider alternative policy choices to minimize any adverse effects on captive customers.

The Comments in Response to the NOI

9. The Commission received comments from 40 parties in response to the NOI. Comments in support of the Commission’s current discount policies were filed by BP America Production Company and BP America Energy Company (BP America), Cinergy Services, Inc. (Cinergy), Discovery Gas Transmission (Discovery Gas), Dominion Resources Services, Inc. (Dominion), El Paso Corporation’s Pipeline Group (El Paso), Enbridge Inc. and Enbridge Energy Partners (Enbridge), Florida Power & Light (Florida Power), Gas Transmission Northwest Corporation (Northwest), Gulf South Pipeline Co., L.P. (Gulf South), Iowa Utilities Board, Independent Petroleum Association of America (IPAA), Interstate Natural Gas Association of America (INGAA), Louisville Gas & Electric Company (Louisville Gas), Memphis Light, Gas and Water Division (Memphis Light), Michigan Consolidated Gas Company (Mich Con), MidAmerican Energy Co. (MidAmerican), Natural Gas Pipeline Co. of America (Natural), Natural Gas Supply Association (NGSA), Northern Natural Gas Co. (Northern), Texas Gas Transmission, LLC (Texas Gas), Nicor Gas, Process Gas Consumers Group and American Forest and Paper Products (Process Gas), Reliant Energy Services, Inc. (Reliant), Semptra Global Enterprises (Semptra), Southern California Gas Company and San Diego Gas & Electric Co. (SoCalGas and San Diego), Transcontinental Gas Pipeline Corp. (Transco), Williston Basin Interstate Pipeline Co. (Williston).

10. Generally, the parties supporting the current policy state that the policy

has worked well, is central to the Commission’s procompetitive policies, and sends appropriate price signals to the market. They argue that a discount adjustment for gas-on-gas competition is essential to competition in the secondary market. Further, they assert that there are safeguards that adequately protect captive customers.

11. In addition, several parties generally support the Commission’s policy, but seek modifications of certain aspects of the policy. These parties are Calpine Corporation (Calpine), CenterPoint Energy Resources Corp. (CenterPoint), Memphis Light, Gas, and Water (Memphis Light), Missouri Public Service Commission (MoPSC), National Fuel Gas Distribution Corporation and Niagara Mohawk Power Corporation (National Fuel), and Northwest Industrial Gas Users (Northwest Industrials). The parties seek modification of the current policy with regard to the burden of proof on pipelines seeking a discount adjustment, discounts that result from competition with capacity release, discounts on expansion capacity, the need for pipelines to make periodic section 4 filings, and the adequacy of the information posted concerning the discounts.

12. On the other hand, comments opposing the Commission’s policy were filed by the American Public Gas Association (APGA), Arizona Electric Power Cooperative, Inc. (Arizona Electric), Illinois Municipal Gas Agency (IMGA),⁹ Northern Municipal Distributor Group and the Midwest Region Gas Task Force Association (Northern Municipals), National Association of State Utility Consumer Advocates (NASUCA), and the Commission’s Office of Administrative Litigation (OAL).

13. Generally, the parties opposing the policy state that the Commission’s rationale in support of the discount policy is flawed because it does not recognize that one pipeline’s gain through discounting is another pipeline’s loss and the policy does not provide net benefits to captive customers. Further, they assert that even if a discount produces an increase in throughput, that discount also contributes to increased wellhead prices. They assert that the current policy cannot be sustained unless the Commission finds substantial evidence that captive shippers on the competing pipelines obtain a net benefit from the

⁵ The Illinois Municipal Gas Agency (IMGA) raised this issue in a petition for rulemaking in Docket No. RM97–7–000. In the NOI, the Commission stated that it would consider all comments on this issue in Docket No. RM05–2–000 and terminated the proceeding in Docket No. RM97–7–000. The Commission explained that the issues included in Docket No. RM05–2–000 include all the issues raised in the Docket No. RM97–7–000 proceeding. IMGA did not seek rehearing of the Commission’s decision to terminate the Docket No. RM97–7–000 proceeding and did not in its comments object to the procedural forum offered to it in Docket No. RM05–2–000.

⁶ 67 FERC ¶ 61,155 (1994).

⁷ *Id.* at 61,458.

⁸ For a more detailed discussion of the background of the Commission’s selective discount policy, see the NOI at P 2–10.

⁹ IMGA also filed a responding affidavit. The NOI did not provide for reply comments and no other party filed a reply. In these circumstances, the Commission will not consider IMGA’s response.

throughput adjustment. The issues raised by the parties are discussed below.

Discussion

14. After considering the comments filed in response to the NOI, the Commission has determined not to modify its current policies concerning selective discounting. Therefore, the Commission will continue to allow a pipeline to seek a reduction in the volumes used to design its maximum rates, if it obtained those volumes by offering discounts to meet competition, regardless of the source of that competition. As the Commission stated in Order No. 636:

The Commission's responsibility under the NGA is to protect the consumers of natural gas from the exercise of monopoly power by the pipeline in order to ensure consumers "access to an adequate supply of gas at a reasonable price." [*Tejas Power Corp. v. FERC*, 908 F.2d 998, 1003 (D.C. Cir. 1990).] This mission must be undertaken by balancing the interests of the investors in the pipeline, to be compensated for the risks they have assumed, and the interests of consumers, and in light of current economic, regulatory, and market realities.¹⁰

In light of existing conditions in the natural gas market, the Commission concludes that its existing policies concerning selective discounting are more consistent with the goal of ensuring adequate supplies at a reasonable price, than any of the alternatives proposed in the comments in response to the NOI.

A. Discount Adjustments Associated With Gas-on-Gas Competition

15. APGA, IMGA, NASUCA, Northern Municipals, Arizona Electric Cooperative, and OAL assert that the Commission should revise its discount policy so as to eliminate any adjustment to rate design volumes for discounts given to meet competition from other transporters of natural gas (which we will refer to as gas-on-gas competition). They point out that the Commission's rationale for permitting selective discounts is that discounts benefit all customers, including captive customers that did not receive the discounts, because the discounts allow the pipeline to maximize throughput and thus spread its fixed costs across more units of service. A discount adjustment is permitted in the pipeline's next rate case in order to avoid discouraging such beneficial discounts. These parties contend that, while this rationale may justify permitting an adjustment to rate design volumes for discounts given to

obtain a customer who would otherwise use an alternative fuel and not ship gas at all, it is not true where discounts are given to meet competition from other gas transporters.

16. In the latter situation, these parties argue, gas-on-gas competition permits a customer who must use gas, but has access to more than one pipeline, to obtain a discount. These parties assert that such a discount does not produce an overall increase in pipeline throughput; it simply shifts throughput from one pipeline to another. As a result, they argue, discounts given to meet gas-on-gas competition provide no net benefit to captive customers as a class. In fact, captive customers would be better off if competing pipelines were discouraged from offering discounts in competition with one another, since then the throughput at issue would flow on one of the pipelines at the maximum rate rather than at a discounted rate. They conclude that such discounts should not be encouraged through the availability of a discount adjustment in the pipeline's next rate case. Rather, to the extent a pipeline may wish to give a discount in such circumstances, the pipeline and its shareholders should be required to absorb the cost of the discount.

17. The remaining commenters generally support continuing to allow an adjustment to rate design volumes for discounts given to meet gas-on-gas competition, although some commenters suggest other changes in Commission policy concerning discounts.

18. After reviewing all the comments, the Commission has concluded that, in today's dynamic natural gas market, any effort to discourage pipelines from offering discounts to meet gas-on-gas competition would do more harm than good. Accordingly, the Commission will not modify its policy to prohibit pipelines from seeking adjustments to their rate design volumes to account for discounts given to meet gas-on-gas competition. However, in individual rate cases, parties remain free to contend that, in the circumstances of the particular case, a full discount adjustment may be inequitable.¹¹

19. Before explaining our reasons for reaching this conclusion, we first observe that pipelines face at least three separate categories of so-called gas-on-gas competition. One category is competition from other interstate pipelines subject to the Commission's

NGA jurisdiction. The second category is competition from capacity releases by the pipeline's own firm customers. The third category is competition from intrastate pipelines not subject to the Commission's jurisdiction. The commenters opposing discount adjustments for gas-on-gas competition focus on the first two types of gas-on-gas competition. They generally recognize that the Commission has no ability to discourage intrastate pipelines outside the Commission's jurisdiction from offering discounts in competition with interstate pipelines and therefore interstate pipeline discounts to avoid loss of throughput to non-jurisdictional intrastate pipelines do benefit captive customers of the interstate pipelines. Therefore, our discussion below addresses only the first two types of gas-on-gas competition. Because the contentions of the parties and our reasons for allowing discount adjustments for discounts to meet competition from other interstate pipelines and discounts to meet competition from capacity release are different, we discuss the two separately below.

1. Competition From Other Interstate Pipelines

20. In the NOI, the Commission asked several questions concerning the extent to which interstate pipelines give discounts to meet competition from other interstate pipelines, including asking IMGA to explain the basis for its previous statements that over 75 percent of discounts are for this purpose. None of the commenters have provided responses that would enable the Commission to estimate with any precision what percentage of pipeline discounts are currently being given to meet competition from other interstate pipelines. For example, IMGA has clarified in its comments that its over 75 percent estimate is based solely on the testimony of its witness in Southern Natural Gas Company's section 4 rate case in Docket No. RP92-134-000. That testimony only analyzed the discounts given by Southern during the period May 1992 through April 1993.¹² Clearly, the discounting practices of one interstate pipeline over ten years ago are not probative as to the prevalence of gas-on-gas discounting by all interstate pipelines today.

21. Nevertheless, all commenters, whether they oppose or support allowing rate design volume adjustments for discounts to meet gas-on-gas competition from other interstate

¹¹ See, e.g., *Natural Gas Pipeline Company of America*, 73 FERC ¶ 61,050 at 61,128-29 (1995); *El Paso Natural Gas Co.*, 72 FERC ¶ 61,083 at 61,441 (1995).

¹² Affidavit of Baker Clay at 16, attached to IMGA's comments.

¹⁰ Order No. 636 at 30,392.

pipelines, appear to agree that such discounts are, in INGAA's words, "widespread."¹³ Thus, the Commission recognizes that such discounts make up a significant portion of pipeline discounts. It also appears that such discounts are more pervasive in some regions than others. For example, INGAA states that such discounts are pervasive in the production areas of East Texas, South Louisiana, and South Texas, as well as in the Midwest and the Western regions.

22. APGA, IMGA, NASUCA, Northern Municipals, Arizona Electric Cooperative, and OAL all contend that pipeline discounts given to meet competition from other interstate pipelines do not increase overall interstate pipeline throughput and therefore do not benefit captive customers. These commenters assert that the customers who obtain such discounts are larger LDCs, industrials, or electric generators who may have access to more than one interstate pipeline but who are not fuel switchable. These commenters thus assert that such customers would take the same amount of gas even if required to pay the maximum rate of whichever pipeline they choose to use. Based on that premise, these commenters assert that discounts resulting from competition between interstate pipelines serve only to reduce the revenue contribution of the customers receiving the discounts, thereby forcing captive customers without access to more than one pipeline to bear additional costs. In short, these commenters make the same contention the DC Circuit described in *AGD I*,¹⁴ when it stated, "It has long been contended * * * that rate differentials based exclusively on competition between transporters with similar cost functions may end up forcing captive customers to bear disproportionate shares of fixed costs without any offsetting gain in efficiency."

23. However, the court followed the description of this contention with the statement, "The contention is not self evidently true: if the demand of buyers with access to competing carriers is at all price elastic, the price reductions they enjoy will raise their demand close to competitive levels."¹⁵ Based on the

comments filed by the supporters of the Commission's current policy, the Commission finds that the demand of shippers with access to more than one interstate pipeline is sufficiently price elastic that discouraging discounts by competing interstate pipelines would do more harm than good.

24. It does not follow from the fact that a potential pipeline customer currently lacks the ability to use alternative fuels that its demand for gas is totally inelastic. Supporters of the current policy offer many examples of why this is so. Industrial and other business customers of pipelines, who account for over half of U.S. end-use gas consumption,¹⁶ typically face considerable competition in their own markets and must keep their costs down in order to prosper. Lower energy costs achieved through obtaining discounted pipeline capacity can help them increase operations at their plants or at least minimize the possibility that such customers will outsource their production to other areas where their product can be produced at lower cost or simply close their plants due to an inability to compete.¹⁷ For example Process Gas Consumers¹⁸ stated, "A plant may be able to increase output based on access to a competitive natural gas source on a competing pipeline but only if a transportation discount is given. In that case, a discount based on gas-on-gas competition will actually increase throughput instead of simply shifting throughput from one pipeline to another." Similarly, as BP America¹⁹ states, "Requiring generators to pay maximum rates might result in marginal generation costs exceeding the market price of power, forcing the generator to shut down."

25. Discounts may also reduce the incentive for existing non-fuel switchable customers to install the necessary equipment to become fuel switchable.²⁰ In addition, potential new customers, such as companies considering the construction of gas-fired electric generators, may be more likely to build such generators if they obtain discounted capacity on the pipeline.²¹ In all these situations a discount may

cause the customer to contract for a greater amount of capacity on whichever pipeline they choose than they would have if the pipeline had not offered them a discount.

26. Commenters opposing discount adjustments for gas-on-gas competition also complain that larger LDCs may use their access to more than one pipeline to obtain discounts for capacity that, absent the willingness of the pipelines to offer discounts in competition with one another, the LDC would contract for at the maximum rate. LDCs in the business of distributing gas obviously do not have the option of switching to an alternative fuel. However, that does not mean that they would necessarily contract for the same amount of interstate pipeline capacity regardless of the price of that capacity. An LDC's need for interstate pipeline capacity depends upon the demand of the LDC's customers for gas, and that demand is elastic. LDCs typically have customers who are fuel switchable. They also have non-fuel switchable industrial or business customers whose gas usage may vary depending upon cost for the same reasons as the similar customers directly served by the pipelines discussed above. Moreover, LDCs may have the option of building more facilities of their own as a substitute for some of their interstate capacity.²² Thus, a discount may cause such an LDC to contract for more firm capacity than it would have, if it had been unable to obtain discounted capacity on any pipeline.

27. Pipeline discounts may also enable natural gas producers to keep marginal wells in operation for a longer period and affect their decisions on whether to explore and drill for gas in certain areas with high production costs. For example, the Natural Gas Supply Association²³ stated, "If forced to pay maximum tariff rates to move gas out of certain production areas, particularly offshore, or for marginal wells, in some circumstances this could impact development or even lead to premature abandonment of existing gas wells." Also, many producers sell gas under net-back arrangements, under which the price they receive for sale of the gas commodity is the market price for delivered gas in the consuming area minus the cost of transportation.²⁴ Thus, a higher cost of transportation translates into a lower price for the gas

¹³ INGAA comments at 17. INGAA states gas-on-gas discounting is widespread, "particularly when one takes into consideration" competition from capacity release and non-jurisdictional pipelines. However, the Commission does not understand INGAA to dispute that a significant portion of pipeline discounts are given to meet competition from other interstate pipelines.

¹⁴ 824 F.2d at 1011-2.

¹⁵ *Id.* at 1012.

¹⁶ As cited by BP America at 12 Fn. 8, the Energy Information Administration (EIA) reports that non-human needs consumers account for about 60 percent of end-use consumption.

¹⁷ Williston at 21-22; INGAA at 11 and the accompanying Henning Affidavit at 15; Natural at 19.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 12.

²⁰ Nicor at 5; INGAA, the accompanying Henning Affidavit at 18, Natural, Economic Analysis at 15.

²¹ Reliant Energy Services, Inc. at 6; Gulf South at 28, INGAA, the accompanying Henning Affidavit at 18; Natural, Economic Analysis at 15.

²² Nicor at 8. ("In a number of instances, Nicor Gas had found it more economical to use discounted capacity rather than to construct additional facilities.")

²³ NGA at 8. See also INGAA at 111-12, Henning Affidavit at 18, 22.

²⁴ IPAA at 4.

commodity, which may render some production activities uneconomic.²⁵ Therefore, once again a discount in this situation could lead to increased throughput.

28. Finally, on many pipeline systems, the bulk of the pipelines' discounts are given to obtain interruptible shippers. All interruptible shippers may reasonably be considered as demand elastic, regardless of whether they are fuel switchable. Their very choice to contract for interruptible service shows that they do not require guaranteed access to natural gas.²⁶ Otherwise, they would have purchased firm interstate pipeline capacity. Thus, absence of a discount could cause such a shipper to take less service or discontinue service altogether, since the shipper has already indicated it does not require service.

29. The Commission thus finds no basis to conclude that overall interstate pipeline throughput would remain at the same level, if the Commission discouraged interstate pipelines from giving discounts in competition with one another. Rather, it seems clear that such discounts do play a role in increasing throughput on interstate pipelines. The Commission thus rejects the fundamental premise of the commenters seeking to have the Commission disallow any discount adjustment in Natural Gas Act (NGA) section 4 rate cases for discounts given in competition with another interstate pipeline.

30. Apart from the issue of the extent to which such discounts increase overall throughput on interstate pipelines, the Commission finds that discounts arising from competition between interstate pipelines provide other substantial public benefits, which would be lost if the Commission sought to discourage such discounting. Such discounting leads to more efficient use of the interstate pipeline grid, by enabling pipelines to adjust the price of their capacity to match its market value. Any effort to discourage interstate pipelines from offering discounts when necessary to reduce their rates to the market value of their capacity would lead to harmful distortions in both the commodity and capacity markets.

31. As the Commission found in Order No. 637, the deregulation of wellhead natural gas prices, together with the requirement that interstate

pipelines offer unbundled open access transportation service, has increased competition and efficiency in both the gas commodity market and the transportation market. Market centers have developed both upstream in the production area and downstream in the market area. Such market centers enhance competition by giving buyers and sellers a greater number of alternative pipelines from which to choose in order to obtain and deliver gas supplies. As a result, buyers can reach supplies in a number of different producing regions and sellers can reach a number of different downstream markets.

32. The development of spot markets in downstream areas means there is now a market price for delivered gas in those markets. That price reflects not only the cost of the gas commodity but also the value of transportation service from the production area to the downstream market. The difference between the downstream delivered gas price and the market price at upstream market centers in the production area (referred to as the "basis differential") shows the market value of transportation service between those two points. As a result, "gas commodity markets now determine the economic value of pipeline transportation services in many parts of the country. Thus, even as FERC has sought to isolate pipeline services from commodity sales, it is within the commodity markets that one can see revealed the true price for gas transportation."²⁷ These basis differentials may vary on a daily and seasonal basis.

33. Discounting pipeline capacity to the market value indicated by the basis differentials provides greater efficiency in the production and distribution of gas across the pipeline grid, promoting optimal decisions concerning exploration for and production of the gas commodity and transportation of gas supplies to locations where it is needed the most. First, such discounting helps minimize the distorting effect of transportation costs on producer decisions concerning exploration and production. The various interstate pipelines competing in the same downstream markets may bring gas from different supply basins. For example, different interstate pipelines serving California are attached to supply basins in the Texas, Oklahoma, Gulf Coast area; the Rocky Mountain area, and Canada. Without discounts by the higher cost

pipelines, producers in supply basins served by higher cost pipelines would generally face the burden of any price reductions necessary to meet the market price for delivered gas in the downstream areas.²⁸ As a result, gas reserves from supply areas served by lower cost pipelines would have a built-in cost advantage over gas reserves served by higher cost pipelines. Thus, lack of discounting could cause production of reserves served by higher cost pipelines to be delayed or reduced, even though those reserves might have similar or greater potential. This is inconsistent with the goal of ensuring consumers access to an adequate supply of gas at reasonable costs.

34. Second, if several interstate pipelines serve the same downstream market, discounting can help minimize short-term price spikes in response to increases in demand. In a situation where the maximum rate of the higher cost pipeline is greater than the basis differential between its supply area and the market area in question, then absent a discount adjustment, that pipeline may not be willing to transport additional supplies at a discount until the basis differential rises to its maximum rate. Thus, discouraging discounting by the higher cost pipeline could delay the supply increases in the downstream market necessary to moderate the price spike.²⁹

35. Third, discounting also enables interstate pipelines with higher cost structures to compete with lower cost pipelines for customers, enabling the capacity of both pipelines to be utilized in the most efficient manner possible.³⁰ In the absence of such discounts, existing customers of the higher cost pipeline with access to the lower cost pipeline would likely switch to the lower cost pipeline to the extent it has available capacity. Similarly, new customers would contract first with the lower cost pipeline.³¹ Fewer customers contributing to the fixed costs of the higher cost pipeline would lead to higher rates on that pipeline, to the detriment of its captive customers.³² Moreover, the demand for service on the lower cost pipeline combined with increasing rates on the higher cost pipeline could trigger an expansion of the lower cost pipeline despite the existence of unused capacity on the higher cost pipeline, as long as the expansion could be priced at less than the higher cost pipeline's maximum

²⁵ Williston at 26 ("Pipeline revenues industry wide could fall significantly as some producers, particularly those with already low operating margins, shut their wells rather than transport gas to market at maximum rate."); INGAA, Henning Affidavit at 22.

²⁶ Williston at 22.

²⁷ Order No. 637 at 31,274 (quoting M. Barcella, *How Commodity Markets Drive Gas Pipeline Values*, Public Utilities Fortnightly, February 1, 1998 at 24–25).

²⁸ Reliant Energy at 11; Gulf South at 30.

²⁹ Duke Energy at 19.

³⁰ Sempra at 6; Nicor at 6; Gulf South at 34.

³¹ Duke Energy at 27–28.

³² Reliant Energy at 9.

rate. However, if the higher cost pipeline could discount, then an expansion would be unnecessary, and thereby lead to a more efficient result.

36. Fourth, discounting helps facilitate discretionary shipments of gas into storage during off-peak periods. Some marketers and others may only move gas into storage when existing seasonal prices and/or tradeable basis differentials allow them to hedge their financial risks. If pipelines are discouraged from discounting the price of their capacity to the seasonal basis differential, some customers may find it too risky to put gas into storage.³³ This may then lead to higher peak period gas costs, when the supply of gas in storage is lower than it otherwise would have been.

37. Finally, selective discounting helps pipelines more accurately assess when new construction is needed. When the basis differential between two points equals or exceeds the applicable maximum tariff rates for prolonged periods of time, that fact indicates a need for more capacity between those points. In contrast, basis differentials below maximum rates indicate additional capacity between the relevant points is not needed. Discouraging discounting would distort these price signals, since a high basis differential could simply be the result of the lack of discounting as opposed to an indication of a capacity constraint.³⁴ Moreover, it is only efficient to construct new pipeline facilities when the stand-alone cost of the new facilities is less than the incremental cost of serving the same customer using the facilities of an existing pipeline. However, if the existing pipeline is discouraged from discounting, the construction of new pipeline facilities could occur in selected locations where the stand-alone cost of the new pipeline is less than the embedded cost rate of an existing higher cost pipeline. Thus, discouraging existing pipelines from offering discounts in such situations could distort investment decisions.³⁵

2. Competition From Capacity Release

38. APGA, National Fuel, NASUCA, Northern Municipals, and OAL oppose inclusion of a discount adjustment in pipeline rates for discounts that result from competition with the pipeline's own customers who are participating in capacity release. These parties argue that when pipelines receive a discount

adjustment for discounts given in competition with capacity releases made by the pipeline's captive customers, the pipeline has a competitive advantage over the releasing shippers because the cost of the discount is subsidized by those same releasing shippers. They argue that to the extent the pipeline is able to sell this capacity by offering a discount, the releasing shipper is harmed by not being able to capture revenues from the release. NASUCA argues that if the shipper who is competing with the pipeline through attempts to release capacity is an LDC, retail consumers are doubly burdened, first, by the loss of the release revenues to offset high cost or stranded capacity and, second, in the payment of the subsidy for the discount given by the pipeline.

39. The goal of the Commission in creating the capacity release market in Order No. 636 was to create a robust secondary market for capacity where the pipeline's direct sale of its capacity must compete with its firm shipper's offers to release their capacity. Capacity release requires pipelines to discount, or suffer the loss of those sales.³⁶ Capacity release has made it more difficult for pipelines to obtain additional throughput through selective discounting. As the Commission explained in Order No. 636, capacity release reduces the pipeline's sale of interruptible service because potential purchasers of interruptible service would have the option of purchasing released firm capacity.

40. Further, as the court recognized in *INGAA v. FERC*,³⁷ the establishment in Order No. 636 of segmentation and flexible point rights was intended to enhance the value of firm capacity and promote competition in the secondary market between shippers releasing their capacity and pipelines, as well as between releasing shippers themselves. In Order No. 637, the Commission took additional actions to enhance flexibility and competition in the secondary market by requiring pipelines to permit a shipper to segment its capacity either for its own use or for the purpose of capacity release. This enhances shippers' ability to compete in the capacity release market by giving them the right to segment capacity and sell their capacity in separate packages.

41. The capacity release program together with the Commission's policies on segmentation, and flexible point rights, has been successful in creating a

robust secondary market where pipelines must compete on price. To prevent pipelines from competing effectively in this market would defeat the purpose of capacity release and eliminate the competition that capacity release has created. Competition between the pipeline and its shippers will be stifled if the pipeline's ability to offer service at a price below the maximum rate is hampered by lack of a discount adjustment. Diminished competition in the secondary market will tend to raise prices to the detriment of all shippers.

42. Capacity release provides benefits to captive customers by allowing them to compete with the pipeline for the sale of their unused capacity. To the extent they are able to sell their unused capacity in the capacity release market at a discount, they will be able to offset a portion of their transportation costs. It is not unreasonable to require them to compete with the pipeline for the sale of this capacity, and the Commission has provided shippers with flexible point rights and the ability to segment their capacity to enhance their ability to compete in the secondary market. The releasing shipper has an additional competitive advantage over the pipeline because the capacity that is being released by the shipper is firm capacity, while the pipeline may be limited to offering interruptible service because it has already sold the capacity to the releasing shipper on a firm basis. Therefore, the service being released by the shipper has a higher value. Moreover, any discount adjustment received by the pipeline is not a subsidy, but simply gives the pipeline an opportunity to recover its costs, consistent with the court's admonition in *AGD I*³⁸ and is subject to review in the rate case.

3. The Discount Adjustment and Expansion Capacity

43. IMGA, NASUCA, Northern Municipals, and OAL argue that the Commission should modify its policy and disallow discount adjustments for discounts given on expansion capacity. These parties argue that permitting such

³⁸ 824 F.2d 981, 1012 (D.C. Cir. 1987). In *AGD I*, the court addressed an argument presented by some pipelines that the Commission's selective discount policy might lead to the pipelines under-recovering their costs. The court set forth a numerical example showing that the pipeline could under-recover its costs, if, in the next rate case after a pipeline obtained throughput by giving discounts, the Commission nevertheless designed the pipeline's rates based on the full amount of the discounted throughput, without any adjustment. However, the court found no reason to fear that the Commission would employ this "dubious procedure," and accordingly rejected the pipelines' contention.

³³ BP America at 13.

³⁴ Gulf South at 18-19.

³⁵ Kinder Morgan, Declaration of David Sibley and Michael Doane at 16. Nicor at 4. Enbridge at 8.

³⁶ See Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 at 30,562; Order No. 636-B, 61 FERC ¶ 61,272 at 61,999.

³⁷ 285 F.3d 18, 36 (D.C. Cir. 2002).

a discount artificially reduces the true price of the new capacity, interferes with the workings of the market, and artificially influences the economic decisions made by those parties participating in the project. Further, they argue, there is no justification for requiring captive customers to subsidize new construction.

44. Moreover, these parties argue that permitting a discount adjustment for discounts on expansions is at odds with the Commission's policy concerning new projects which requires that they be incrementally priced where existing customers receive no benefits from the expansion project.³⁹ NASUCA states that the Commission adopted its pricing policy for expansion projects to send accurate price signals to market participants as to the cost of new capacity, and that discount adjustments would distort those price signals and essentially result in rolled-in rates if the difference between the discount and the actual cost of expansion projects were recovered in rates from pre-expansion, non-discounted shippers. IMGA states that in order for a pipeline to construct new facilities, there should be a market demand for those facilities and if a pipeline must discount expansion capacity in order to compete, the expansion is probably not necessary.

45. On the other hand, INGAA, Duke, El Paso, Reliant, Williston, BP America, CenterPoint, Louisville, MidAmerican, Nicor, SoCalGas and SDG&E, and Transco argue the selective discount policy should be applicable to expansions and that a prohibition against selective discounting would discourage pipeline expansions.

46. The Commission finds no basis for creating an exemption from the selective discounting policy for expansion projects. As the Commission has moved from a regulatory model to a model based on greater competition, it has recognized that new construction is no longer undertaken solely for the purpose of serving new markets, but also to provide natural gas customers with competitive alternatives to existing service.⁴⁰ Developing policies that encourage pipelines to actively compete with each other provides producers and end users with new market opportunities and provides customers with different supply options, which

tends to reduce the delivered price of gas.

47. Eliminating the discount adjustment for new capacity could discourage pipeline expansion into areas to compete with existing service. For a pipeline to undertake an expansion into markets that are currently receiving interstate service, the new pipeline must have the flexibility to price the project to compete with the incumbent pipeline and still earn a reasonable return on that project. There would be no incentive for a pipeline to expand into an area served by another pipeline if it were required to charge a rate higher than the existing rates in the territory. Therefore, the new pipelines will need the flexibility to discount some aspect of its transportation rate.

48. Moreover, as a result of recent expansions, there are fewer captive customers,⁴¹ and policies that encourage these expansions will provide more options to customers that are currently captive and thus enable them to benefit from the competitive markets. The Commission's policies should encourage pipelines to construct new capacity into captive markets, and the elimination of the discount adjustment for expansion capacity would not be consistent with that goal.

49. In receiving approval for the expansion project, the pipeline must meet the criteria set forth in the *Certificate Pricing Policy Statement*,⁴² and if the expansion does not benefit current customers, the services must be incrementally priced. The Commission would not approve a discount adjustment in circumstances that would shift the costs of an expansion to existing customers that did not benefit from the expansion because this would be contrary to the Commission's policy.

50. Calpine states that the goal of discounting, to spread fixed costs over more customers and thereby lower costs to captive customers, is not necessarily met when discounts are provided on expansions. Calpine asserts that because discounts on expansion capacity involve the potential sharing of new fixed costs among new or existing shippers, these discounts also should bear a higher level of scrutiny before

they are included in a discount adjustment.

51. As explained above, the issue of whether rates on expansion capacity are incremental or rolled-in will be determined in accordance with the *Certificate Pricing Policy Statement* and allowing an adjustment in a rate case for the discounts does not make the rates rolled-in. There is no reason to change the burden of proof with regard to discounts on expansions. As with all other discounts, the ultimate burden of proof is on the pipeline to show that the discounts were granted to meet competition.

4. Protections for Captive Customers

52. Opposition to the Commission's discount adjustment policy does not come from a wide range of interests, but from a group of publicly-owned municipal gas companies that represents a small percentage of throughput on the national pipeline system. APGA implies that all captive customers are opposed to the selective discount policy.⁴³ However, there are captive customers that do not oppose the Commission's selective discount policy. As the Commission explained in Order No. 637, if a customer is truly captive and has no alternatives for service it is likely that its contracts will be at the maximum rate.⁴⁴ There are many shippers that pay the maximum rate, and it is only the small publicly-owned municipal gas companies that have objected to the selective discount policy. It is possible to adopt measures to protect these customers in circumstances where the Commission's policy works an undue hardship on them and at the same time retain the competitive benefits of the policy for the majority of shippers.

53. The captive customers that oppose the Commission's selective discount policy argue that they are being harmed because it has resulted in increased rates for them. Northern Municipals gives as an example the circumstances on Northern Natural Gas Company (Northern) where Northern gave a large discount to an existing customer, Centerpoint, to prevent it from taking its business to a new intrastate pipeline. Northern Municipals states that these discounted rates will be in effect until 2019 and that Northern will attempt to

³⁹ They cite Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,277 (1999), order on clarification, 90 FERC ¶ 61,128 (2000), order on further clarification, 92 FERC ¶ 61,094 (2000) (*Certificate Pricing Policy Statement*).

⁴⁰ Independence Pipeline Co., 89 FERC ¶ 61,283 at 61,843 (2000).

⁴¹ INGAA states that since the implementation of the Order No. 636, substantial new capacity has been built, leading to more gas-on-gas competition and thus fewer captive customers. INGAA states that the 36 pipeline companies that responded to a 2005 INGAA survey reported that they spent \$19.6 billion for interstate pipeline infrastructure between 1993 and 2004.

⁴² 88 FERC ¶ 61,277 (1999), order on clarification, 90 FERC ¶ 61,128 (2000), order on further clarification, 92 FERC ¶ 61,094 (2000).

⁴³ APGA states that if captive customers benefited from the discounts, they would support them, but instead, captive customers are the staunchest critics of such discounts. APGA at 5–6.

⁴⁴ Order No. 637 at 217. In Order No. 637, the Commission concluded that captive customers paying the maximum rate need the protection of the right of first refusal, but that customers with alternatives that pay less than the maximum rate do not need this protection.

recover this discount from its captive shippers. Northern Municipals states that no significant additional volumes will flow as a result of the discount. Moreover, Northern Municipals states, under the present policy, Northern does not have the burden of proof to show that the discounts were either necessary or reasonable.

54. Northern Municipals does not allege that any harm has occurred to them as yet, but anticipates that the harm will occur when Northern seeks a discount adjustment in its next rate case. This harm is therefore speculative. Further, Northern Municipals' statement that Northern has no obligation to show that the discounts were necessary or reasonable is not accurate. Northern has the ultimate burden of showing that this long-term discount was in fact necessary to meet competition.⁴⁵ Further, the Commission has the obligation to assure that rates to all customers are just and reasonable and can consider mitigating measures where the rate impact on captive customers is inequitable. The circumstances described by Northern Municipals do not warrant the Commission's abandoning its selective discount policy that has provided substantial competitive benefits to a large number of shippers on the national grid.

55. There are already rate measures in place on many pipelines that give small captive customers special rates that provide them protection. For example, Northern Natural states that on its system, small shippers pay volumetric rates. Other pipelines also offer special favorable rates to small captive shippers.⁴⁶ Small shippers paying volumetric rates do not pay a reservation charge to reserve capacity and their rates are often developed using an imputed load factor that is higher than the customer's actual use of the system. Small customers therefore pay less for their service than they would if their rates were developed in the same manner as other shippers, and other shippers on the system subsidize the rates of the small shippers.

56. Further, to the extent that the Commission's discount policy furthers competition, it should encourage other pipelines to compete for the business of these captive customers. As the national pipeline grid becomes more competitive, there will be fewer captive customers, and captive customers therefore will ultimately benefit from

the Commission's policies that encourage competition.

57. Moreover, the Commission has a responsibility to protect captive customers and can take action to protect these customers in case-specific situations. The Commission has always looked at the particular circumstances of each case and has adopted special protections for captive customers where circumstances warrant. For example, in *Natural Gas Pipeline Company of America*,⁴⁷ the Commission stated that it was "mindful of our obligation to protect the pipeline's captive customers, who have little or no alternative to obtaining service over Natural's facilities," and rejected the pipeline's proposal to recover the costs associated with unsubscribed capacity from its captive customers. The Commission explained that it would not allow a pipeline to shift costs to its captive customers without considering the adverse effects this would have on those customers.⁴⁸ The Commission continues to be mindful of its obligation to captive customers and will consider the impact of any discount adjustment on those customers in specific proceedings.

B. Other Issues

58. As discussed above, several parties generally support the selective discount policy, but suggested certain modifications to the policy. Specifically, these parties have suggested modifications to the policy with regard to the burden of proof, requirements for periodic rate filings, and informational postings. These proposed modifications are discussed below.

1. Burden of Proof

59. Under the Commission's current policy, in order to obtain a discount adjustment in a rate case, the pipeline has the ultimate burden of showing that its discounts were required to meet competition. However, the Commission has distinguished between the burden of proof the pipeline must meet, depending upon whether a discount was given to a non-affiliate or an affiliate. In the case of discounts to non-affiliated shippers, the Commission has stated that it is a reasonable presumption that a pipeline will always seek the highest possible rate from such shippers, since it is in the pipeline's own economic interest to do so. Therefore, once the pipeline has explained generally that it gives discounts to non-affiliates to meet competition, parties opposing the

discount adjustment have the burden of producing evidence that discounts to non-affiliates were not justified by competition. To the extent those parties raise reasonable questions concerning whether competition required the discounts given in particular non-affiliate transactions, then the burden shifts back to the pipeline to show that the questioned discounts were in fact required by competition.

60. APGA, Calpine, Centerpoint, Cinergy, NASUCA, Northwest Industrials, and MoPSC argue that the Commission should change this aspect of the policy and place a higher burden of proof on pipelines to justify discounts given to non-affiliates. These parties argue that the pipeline should bear a heavy burden of proof and should be required to provide sufficient and specific evidence that the discount was necessary to accomplish the transaction and that the transaction provided concrete benefits to captive customers by contributing to the recovery of fixed costs. APGA argues that the pipeline should be required to show that the discount is necessary to increase throughput in interstate commerce, not just on the discounting pipeline, and as a result, provides net benefits to captive shippers.

61. The Commission finds that its current policy regarding the burden of proof is based on accurate assumptions and produces a just and reasonable result. As explained above, the pipeline always has the ultimate burden of proof on this issue. However, in the case of non-affiliates, the Commission presumes that the pipeline will seek the highest price possible because it is in its best interest to do so. This is a reasonable presumption. A pipeline, like any other business, will act in its own best economic interest. As the Commission stated in Order No. 436, "[u]nder economic theory, price discounting is a rational policy to pursue only when the pipeline perceives it is better to earn less than a full return on a service than to risk losing the service and failing to achieve the volumes on which its rates for the period in question were based."⁴⁹ It is not the case, as NASUCA suggests, that if a discount adjustment is available, the pipeline offering the discount has no incentive to minimize the level of discount. It is always in the pipeline's best economic interest to obtain the

⁴⁵ See the discussion on the burden of proof below.

⁴⁶ For example, El Paso and Tennessee have special rates for small customers.

⁴⁷ 73 FERC ¶ 61,050 at 61,128–29 (1995).

⁴⁸ See also *El Paso Natural Gas Co.*, 72 FERC ¶ 61,083 at 61,441 (1995).

⁴⁹ Order No. 436, *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs., Regs. Preambles 1982–1985 ¶ 30,665 at 31,543 (1985).

highest price possible from a non-affiliate for its services.

62. Moreover, a hearing in a rate case gives all the parties an opportunity to seek discovery regarding the purpose and level of any discount. Therefore, Commission Staff and other parties can use this opportunity to seek an explanation of each discount, and if the pipeline cannot support any discount, this issue can be raised at the hearing.

63. In view of the reasonableness and accuracy of the presumption that pipelines will seek the highest rate from non-affiliated shippers, requiring the pipeline to substantiate the necessity for all unaffiliated discounts would be unduly burdensome and would discourage a pipeline from discounting. As discussed above, discounting furthers the Commission's goals of fostering a competitive natural gas market where prices reflect the market value of the capacity rather than the maximum regulated rate. It would be contrary to those goals for the Commission to adopt a policy that discourages discounting to meet competition. Similarly, where the discount results in additional throughput on the pipeline, this will necessarily provide additional revenue over which to spread the fixed costs and it is reasonable to assume that this benefits all the pipeline's customers.

64. Calpine states that short-term discounts on existing capacity may benefit shippers, but that pipelines should bear a higher burden of proof with regard to long-term discounts. The Commission finds that there is no reason to change the burden of proof with regard to long-term discount transactions.

65. In *Iroquois Gas Transmission System, L.P.*,⁵⁰ where the pipeline sought an adjustment for several long-term discounts, the Commission explained that in rebutting the presumption that non-affiliate discounts are generally given to meet competition, the parties challenging the discount adjustment need not prove conclusively that the discount was not required to meet competition, but rather must merely introduce evidence to raise a reasonable question concerning whether in fact competition required the discount. Then, the burden is shifted back to the pipeline to introduce evidence to show that competition required it to grant those discounts.

66. In *Iroquois*, the Commission disallowed the adjustment for the long-

term discounts.⁵¹ The Commission stated that while short-term and spot market data may justify a short-term discount, market conditions change over time and a long-term discount cannot be justified based solely on current market data. As the Commission explained, in the case of a long-term discount, the pipeline must present a thorough analysis of whether competition required such a long-term discount. The burden of proof is the same, but because of the nature of the transaction, the evidence required to meet that burden is different in the case of a long-term discount. The current policy therefore applies an appropriate burden of proof to both short-term and long-term discounts and the Commission finds that no change in the burden of proof is warranted.

2. Require Pipelines That Discount To File Periodic Rate Cases

67. In the NOI, the Commission stated that pipelines are no longer required to file periodic rate cases and that many pipelines have not filed a rate case for a number of years. The Commission asked the parties to address the question of how the discount policy has affected captive customers in the absence of a section 4 rate case.

68. Memphis Light, IMGA, NASUCA, NGSAA, Northern Municipals, Northwest Industrials, and OAL argue that captive customers have been harmed by the absence of section 4 rate cases and that the Commission should reinstate the periodic rate filing requirement as a condition to pipelines providing discounted transportation service. These parties argue that without this requirement, pipelines can manipulate the timing of their rate filings to provide themselves with the greatest benefit. Thus, IMGA states that in the five or six years after the Commission established its discount policy, virtually all the pipelines sought and received substantial rate increases based primarily on the throughput adjustment, but also on the high interest rates and capital costs of the time. IMGA states that in recent years, interest rates and capital costs have decreased dramatically and it believes that but for the Commission's discount policy, there should have been and would have been rate proceedings producing rate reductions for most pipelines.

69. Similarly, NASUCA states that the reason many pipelines have not filed rate cases in recent years is related to the status of their earnings. NASUCA

states that the Natural Gas Supply Association annually computes the status of pipeline over-earnings and their studies show that at least 13 pipelines have earned significantly more than authorized in recent years. NASUCA states that because pipelines that are over-earning their authorized returns have not filed rate cases in recent years, consumers on those systems are not seeing the benefit of increased throughput over which the pipeline's fixed costs could be spread. NASUCA states that only by analyzing all elements of cost, throughput and discounts in a section 4 rate case would the Commission be able to determine that the net result of offsetting discount adjustments and increased throughput would be zero on consumers.

70. Northwest Industrials states that because the pipelines retain all the benefits of discounted transportation between rate cases, the Commission should employ a revenue sharing mechanism to benefit customers as appropriate between rate cases.

71. NASUCA and Northern Municipals state that while customers have the right under section 5 of the NGA to file over-earnings complaints against pipelines, the lack of information posted related to discounts and pipeline throughput, the insufficiency of FERC Form 2 to provide rate case data, the shift of the burden of proof, and the prospective nature of relief under section 5 combine to make it an inadequate remedy in these circumstances.

72. On the other hand, Enbridge, INGAA, and Northwest assert that captive customers benefit from the absence of rate cases. INGAA states that for the last decade, pipeline rates have remained stable in nominal dollars and have gone down in real dollars. It asserts that timing of rate cases is now generally dictated by customer settlements or other economic or market forces. Further, INGAA states that rate cases create uncertainty, are expensive and time-consuming, and generally result in a rate increase, not a decrease. In addition, INGAA states, without the triennial review, pipelines have an incentive for cost containment and efficient operation to meet the risks associated with shorter contracts and price competition.

73. Similarly, Northwest states that that the absence of section 4 periodic rate cases has provided an additional safeguard for captive customers because the discount adjustment becomes relevant only when a pipeline seeks to adjust its rates. Northwest states that discounting encourages the pipeline to operate its system efficiently and

⁵⁰ 84 FERC ¶ 61,086 at 61,477 (1998), *reh'g denied*, 86 FERC ¶ 61,216 (1999) (*Iroquois*).

⁵¹ See also, *Trunkline Gas Co.*, 90 FERC ¶ 61,017 at 61,092–95 (2002) (denying a request for an adjustment for a discounted long-term contract).

maximize its use of its system which results in the delay or elimination of the need for a rate case, resulting in long-term rate certainty for shippers.

74. At the time the discount policy was originally adopted, pipeline rates were set every three years under the terms of the Purchased Gas Adjustment (PGA) clause in their tariff. Order No. 636 eliminated the three year rate review and the PGA clause, and section 4 rate cases have been filed much less frequently by the pipelines since. However, as explained below, the Commission has determined that selective discounting does not provide a basis for reinstating a requirement that pipelines file periodic rate cases.

75. Under section 4 of the NGA, the decision to file a rate case is that of the pipeline. It has always been the option of the pipeline to file a rate case at a time when it is advantageous for it to do so. Therefore, IMGA's statement if it were not for the Commission's discount policy, there would have been rate proceedings producing rate reductions for most pipelines is not accurate. This issue is not whether pipelines can choose the timing of their rate case, but whether there is something about the discount adjustment policy that, like the PGA, justifies the requirement that pipelines file periodic rate cases. The Commission concludes that there is not.

76. Under the Commission's PGA regulations, pipelines could recover projected changes in their cost of gas using periodic purchase gas adjustments instead of filing an entire section 4 rate case. In exchange for this ability to change only one cost element pipelines agreed to a reexamination of all their costs and rates at three year intervals to assure that gas cost increases were not offset by decreases in other costs. The PGA was a special rate adjustment mechanism by which pipelines could pass through certain costs to customers between rate cases.

77. Under the selective discount policy, customer's rates are not affected until the pipeline files a rate case. There is no special rate adjustment mechanism that permits pipelines to change their rates and pass additional costs through to customers between rate cases. Therefore, we find no reason to impose a periodic rate review requirement on pipelines that engage in discounting. Selective discounting does not affect the rates of other customers on the system unless a rate case is filed. In these circumstances, the procedures provided for in sections 4 and 5 of the NGA provide sufficient protection to a pipeline's customers.

3. Informational Posting Requirements for Discount Transactions

78. NASUCA recommends that the Commission amend its regulations to require pipelines to post the reasons for each selective discount granted. NASUCA states that the Commission should provide a check-off format of reasons, including gas-on-gas competition, adverse economic conditions that could cause a customer to go out of business, existing alternative fuel capability, planned alternative fuel capability, and other reasons. The pipeline should be required to check all the relevant reasons.

79. Cinergy, on the other hand, states that the Commission's posting and reporting requirements provide the necessary transparency to the marketplace of discount transactions. However, Cinergy states that its review of the informational postings of some pipelines has revealed that much of the required information is missing. Cinergy asks the Commission to emphasize in this proceeding the importance of compliance with its posting and reporting requirements.

80. Under section 284.13(b), pipelines are required to post on their website information concerning any discounted transactions, including the name of the shipper, the maximum rate, the rate actually charged, the volumes, receipt and delivery points, the duration of the contract, and information on any affiliation between the shipper and the pipeline. Further, section 358.5(d) of the regulations requires pipelines to post on their website any offer of a discount at the conclusion of negotiations contemporaneous with the time the offer is contractually binding. This information provides shippers with the price transparency needed to make informed decisions and to monitor transactions for undue discrimination and preference. The Commission will not change its informational posting requirements at this time. However, the Commission takes Cinergy's concerns seriously and will refer allegations of non-compliance with the Commission's posting and reporting requirements to the Office of Market Oversight and Investigation for a potential audit. Furthermore, as part of the Commission's ongoing market monitoring program, the Commission will continue to conduct audits on its own.

The Commission orders:

(A) The Commission's selective discount policy is reaffirmed.

(B) This rulemaking proceeding is hereby terminated.

By the Commission. Chairman Wood concurring in part with a separate statement attached. Commissioner Kelly dissenting in part with a separate statement attached.

Linda Mitry,

Deputy Secretary.

WOOD, Chairman, *concurring in part:*

While I support today's decision to reaffirm the Commission's selective discounting policy, I believe that it would be more efficient, for future Commission auditing purposes, to require pipelines to specify the reason why a discount is given to a customer. In periodic audits, our staff auditors are called upon to determine whether a discount is given for legitimate business purposes. This is not only useful in designing rates in future gas pipeline rate cases, it also is necessary to comply with the Commission's regulations ensuring that pipeline transportation rate discounting not violate section 4(b) of the Natural Gas Act. Making this audit task more transparent at minimal cost is a good government step we ought to take.

Pat Wood, III,

Chairman.

KELLY, Commissioner, *dissenting in part:*

As stated in this order, the Commission's current regulations require pipelines to post certain information on their Web site related to discounted transactions, including the name of the shipper, the maximum rate, the rate actually charged, the volumes, receipt and delivery points, the duration of the contract, and any affiliation between the shipper and the pipeline. In their comments filed in this proceeding, the National Association of State Utility Consumer Advocates (NASUCA) states that what is missing from this list of information is the reason for the discount. I would have supported NASUCA's recommendation to require pipelines to post a check-off list noting the reason that they provided a discount to a particular shipper. I think that requiring such information would not be unduly burdensome on the pipelines, would help shippers to determine whether they are similarly situated and thus eligible for a similar discount, and would help the Commission to ensure that selective discounting is not unduly discriminatory under sections 4 and 5 of the Natural Gas Act. Therefore, I dissent in part from this order.

Sueleen G. Kelly.

[FR Doc. 05-11660 Filed 6-13-05; 8:45 am]

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DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 946****[VA-122-FOR]****Virginia Regulatory Program**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment revises the Virginia Coal Surface Mining Reclamation Regulations. The amendment reflects changes in renumbering of the Virginia Code section references of the Virginia Administrative Process Act; clarifies the filing of requests for formal hearing and judicial review; revisions of the Virginia rules to be consistent with amendments to the Federal rules; revisions to allow approval of natural stream restoration channel design; regulation changes to implement requirements of Virginia HB 2573 (enacted as emergency legislation); and corrections of typographical errors.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on July 14, 2005. If requested, we will hold a public hearing on the amendment on July 11, 2005. We will accept requests to speak at the hearing until 4 p.m. (local time), on June 29, 2005.

ADDRESSES: You may submit comments, identified by VA-122-FOR, by any of the following methods:

- E-mail: rpenn@osmre.gov. Include VA-122-FOR in the subject line of the message.
- Mail/Hand Delivery: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading in the **SUPPLEMENTARY INFORMATION** section of

this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Big Stone Gap Field Office.

Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523-4303. E-mail: rpenn@osmre.gov.

Mr. Leslie S. Vincent, Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (540) 523-8100. E-mail: lsv@mme.state.va.us.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523-4303. Internet: rpenn@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Description of the Proposed Amendment

By letter dated May 9, 2005 (Administrative Record Number VA-1048), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that the program amendment revises Virginia Coal Surface Mining Reclamation Regulations to reflect the changes in the renumbering of the Virginia Code section references of the Virginia Administrative Process Act; clarifies the filing of requests for formal hearing and judicial review; revises the Virginia rules to make them consistent with amendments to the Federal rules; revises its rules to allow approval of natural stream restoration channel design; changes its regulation to implement requirements of Virginia HB 2573 (enacted as emergency legislation in Chapter 3 of the 2005 Virginia Acts of Assembly); and corrects typographical errors. Specifically, the following amendments are proposed:

1. 4 VAC 25-130-700.12 Petitions to initiate rulemaking.

The proposed amendment revises subsection (e) by changing the citation of the Virginia Code section from "9-6.14:1" to "2.2-4000A."

2. 4 VAC 25-130-773.21 Improvidently issued permits; Rescission procedures.

The proposed amendment revises subsection (c), right to appeal, by changing the citation of Virginia Code section from "9-6.14:1" to "2.2-4000A."

3. 4 VAC 25-130-775.11 Administrative Review.

The proposed amendment revises subsection (b)(1) by changing the citation of the Virginia Code section from "9-6.14:12" to "2.2-4020." In addition, new subsection (d) is added to provide as follows:

(d) All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

4. 4 VAC 25-130-775.13 Judicial Review.

New subsection (c) is added to provide as follows:

(c) All notices of appeal for judicial review of a Hearing Officer's final decision, or the final decision on review and reconsideration, shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

5. 4 VAC 25-130-784.20 Subsidence Control Plan.

Subsection (a)(3) is amended by deleting language concerning presubidence survey requirements. The DMME stated that the provision was amended to delete those requirements that are counterpart to Federal regulations that were suspended effective December 22, 1999 (64 FR 71652). The following language is being deleted: "condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw; as well as a survey of the." In addition, the following language is being deleted: "premining condition or value of such noncommercial buildings or occupied residential dwellings and structures related thereto and the." As revised, Subsection (a)(3) provides as follows:

(3) A survey of the quantity and quality of all drinking, domestic and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner in writing of the effect that denial of access will have as described in 4VAC25-130-817.121(c)(4). The applicant must pay for any technical assessment or engineering evaluation used to determine the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the division.

6. 4 VAC 25-130-800.51 Administrative review of performance bond forfeiture.

Subsection (c)(1) is amended by changing the citation of the Virginia Code sections from "9-6.14:12" to "2.2-4020."

Subsection (e) is amended by clarifying that the "Division of Mined Land Reclamation" is now the "Department of Mines, Minerals and Energy." As amended, Subsection (e) provides as follows:

(e) All requests for hearing, or appeals for review and reconsideration made under this section; and all notices of appeal for judicial review of a Hearing Officer's final decision, or the final decision on review and reconsideration shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

7. 4 VAC 25-130-816.11 Signs and markers.

New Subsection (a)(4) is added and existing (a)(4) is redesignated as (a)(5). As amended, Subsection (a) provides as follows:

(a) Specifications. Signs and markers required under this Part shall—

(1) Be posted, maintained, and removed by the person who conducts the surface mining activities;

(2) Be of a uniform design throughout the operation that can be easily seen and read;

(3) Be made of durable material;

(4) For permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied buildings, be made of or marked with fluorescent or reflective paint or material; and

(5) Conform to local ordinances and codes.

8. 4 VAC 25-130-816.43 Diversions. New Subsection (d) is added, and existing Subsection (d) is redesignated as Subsection (e). New Subsection (d) provides as follows:

(d) In lieu of the requirements of paragraphs (a)(2) through (a)(9), (b)(2) through (b)(6) and (c)(1) through (c)(3) of this section, a natural stream restoration channel design approved by the U.S. Army Corps of Engineers as part of an approved U.S. Army Corps of Engineers permit shall be deemed to meet the requirements of this section.

9. 4 VAC 25-130-816.64 Use of explosives; blasting schedule.

New Subsection (a)(4) concerning seismic monitoring is added and provides as follows:

(4) Seismic monitoring shall be conducted when blasting operations on coal surface mining operations are conducted within 1,000 feet of a private dwelling or other occupied building.

10. 4 VAC 25-130-816.105 Backfilling and grading; thick overburden.

This proposed change is intended to revise Virginia's rule to be consistent with the counterpart Federal rule. Thin overburden is addressed under Virginia rule 4 VAC 25-130-816.104. This provision is amended as follows: The term "Thin" is deleted and replaced by the term "Thick" in subsection (a); the term "insufficient" is deleted and replaced by "more than sufficient" in subsection (a); the term "less" is deleted and replaced by the term "more" in subsection (a); and the term "thin" is deleted and replaced by the term "thick" in subsection (b). As amended this provision provides as follows:

(a) Thick overburden exists when spoil and other waste materials available from the entire permit area is

more than sufficient to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is more than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfill and grading the surface configuration of the reclaimed area would not:

(1) Closely resemble the surface configuration of the land prior to mining; or

(2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) Where thick overburden occurs within the permit area, the permittee at a minimum shall:

(1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose;

(2) Meet the requirements of 4VAC25-130-816.102(a)(2) through (j); and

(3) Dispose of any excess spoil in accordance with 4VAC25-130-816.71 through 4VAC25-130-816.75.

11. 4 VAC 25-130-817.11 Signs and markers.

New Subsection (a)(4) is added and existing subsection (a)(4) is redesignated as (a)(5). New subsection (a)(4) provides as follows:

(a) Specifications. Signs and markers required under this Part shall—

(4) For permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied dwellings, be made of or marked with fluorescent or reflective paint or material; and

12. 4 VAC 25-130-817.43 Diversions.

New Subsection (d) is added and existing Subsection (d) is redesignated as Subsection (e). As amended, new Subsection (d) provides as follows:

(d) In lieu of the requirements of paragraphs (a)(2) through (a)(9), (b)(2) through (b)(6) and (c)(1) through (c)(3) of this section, a natural stream restoration channel design approved by the U.S. Army Corps of Engineers as part of an approved U.S. Army Corps of Engineers permit shall be deemed to meet the requirements of this section.

13. 4 VAC 25-130-817.64 Use of explosives; general performance standards.

New Subsection (d) is added and provides as follows:

(d) Seismic monitoring shall be conducted when blasting operations on coal surface mining operations are conducted within 1,000 feet of a private dwelling or other occupied building.

14. 4 VAC 25-130-817.121

Subsidence control.

This provision is amended by deleting Subsections (c)(4)(i)-(iv) and redesignating Subsection (c)(4)(v) as subsection (c)(4). The DMME stated that this provision was amended to delete those requirements that are counterpart to Federal regulations that were suspended effective December 22, 1999 (64 FR 71652). This provision had created a rebuttable presumption that underground mining caused subsidence, where the subsidence damage occurred within the angle of draw. As amended, Subsection (c)(4) provides as follows:

(4) Information to be considered in determination of causation. In a determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the division.

15. 4 VAC 25-130-842.15 Review of decision not to inspect or enforce.

The proposed amendment revises Subsection (d) by changing the citation of the Virginia Code section from "9-6.14:1" to "2.2-4000A."

16. 4 VAC 25-130-843.12 Notices of violation.

The proposed amendment revises Subsection (j) by changing the citation of the Virginia Code section from "9-6.14:1" to "2.2-4000A."

17. 4 VAC 25-130-843.13

Suspension or revocation of permits; pattern of violations.

The proposed amendment revises Subsection (b) by changing the citation of the Virginia Code section from "9-6.14:12" to "2.2-4020." Subsection (e) is amended by clarifying that the "Division of Mined Land Reclamation" is now the "Department of Mines, Minerals, and Energy." As amended, Subsection (e) provides as follows:

(e) All requests for hearing, or appeals for review and reconsideration made under this section; and all notices of appeal for judicial review of a Hearing Officer's final decision, or the final decision on review and reconsideration shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

18. 4 VAC 25-130-843.15 Informal public hearing.

The amendment revises Subsection (c) by changing the citation of the Virginia Code section from "9-6.14:11" to "2.2-4019."

19. 4 VAC 25-130-843.16 Formal review of citations.

Subsection (e) is amended by clarifying that the "Division of Mined Land Reclamation" is now the

"Department of Mines, Minerals, and Energy." As amended, Subsection (e) provides as follows:

(e) All requests for hearing before a Hearing Officer, or appeals for review and reconsideration, made under this section, and all notices of appeal for judicial review of a Hearing Officer's final decision or a final decision on review and reconsideration, shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

20. 4 VAC 25-130-845.13 Point System.

Subsections (c)(1) and (d) are amended to correct typographical errors. At Subsection (c)(1), the phrase "(a) and" is added immediately before "(b)," and the phrase "and (c)" is deleted. As amended, Subsection (c)(1) provides as follows:

(c) Credit for good faith in attempting to achieve compliance.

(1) The division shall deduct from the total points assigned under Subsections (a) and (b) points based on the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation. Points shall be deducted as follows.

Subsection (d) is amended by adding "(a)," immediately before "(b);" adding "and" immediately following "(b)," and deleting "and (d)" immediately following (c). As amended, the language of Subsection (d) provides as follows:

(d) Determination of base penalty.

The division shall determine the base amount of any civil penalty by converting the total number of points calculated under Subsections (a), (b), and (c), of this section to a dollar amount, according to the following schedule.

Subsection (e), concerning credit for additional penalties for previous history is amended at (e)(1) by adding the words "[e]xcept for a violation that resulted in personal injury or fatality to any person." As amended, Subsection (e)(1) provides as follows:

(1) Except for a violation that resulted in personal injury or fatality to any person, the division shall reduce the base penalty determined under Subsection (d) by 10% if the permittee has had no violations cited by the division within the preceding 12-month period.

Subsection (f), concerning maximum penalty which the division may assess, is amended by adding the words "except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under Subsection (d) shall

be multiplied by a factor of twenty (20), not to exceed \$70,000." As amended, Subsection (f) provides as follows:

(f) The maximum penalty which the division may assess under this section for each cessation order or notice of violation shall be \$5,000, except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under Subsection (d) shall be multiplied by a factor of twenty (20), not to exceed \$70,000. As provided in 4VAC25-130-845.15, each day of continuing violation may be deemed a separate violation for the purpose of assessing penalties.

21. 4 VAC 25-130-845.15 Assessment of separate violations for each day.

Subsection (a) is amended in the last sentence by adding the words "or more" immediately following the words "a penalty of \$5,000." As amended, Subsection (a) provides as follows:

(a) The division may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the division shall consider the factors listed in 4VAC25-130-845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which has been assigned a penalty of \$5,000 or more under 4VAC25-130-845.13, the division shall assess a penalty for a minimum of two separate days.

22. 4 VAC 25-130-845.18

Procedures for assessment conference.

The proposed amendment revises subsection (b)(1) by changing the citation of the Virginia Code sections from "9-6.14:11" to "2.2-4019."

23. 4 VAC 25-130-845.19 Request for hearing.

The proposed amendment revises Subsection (c) by changing the citation of the Virginia Code sections from "9-6.14:12" to "2.2-4020."

New Subsection (d) is added to provide as follows:

All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

24. 4 VAC 25-130-846.14 Amount of the individual civil penalty.

Subsection (b) is amended by adding new language to the end of the first sentence. As amended, Subsection (b) provides as follows:

(b) The penalty shall not exceed \$5,000 for each violation, except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under 4VAC25-130-845.13 (d) shall be multiplied by a factor of twenty (20), not to exceed \$70,000. Each day of a continuing violation may be deemed a separate violation and the division may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Director, until abatement or compliance is achieved.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Big Stone Gap Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. VA-122-FOR and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Big Stone Gap Field office at (540) 523-4303.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from

public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on June 29, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 23, 2005.

James M. Taitt,

Acting Regional Director, , Appalachian Regional Coordinating Center.

[FR Doc. 05–11706 Filed 6–13–05; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–307–0482; FRL–7924–3]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns particulate matter (PM) emissions from fluid catalytic cracking units at oil refineries. We are proposing to approve SCAQMD Rule 1105.1 to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 14, 2005.

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

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

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 1001 "I" Street,
Sacramento, CA 95814; and

South Coast Air Quality Management
District, 21865 East Copley Drive,
Diamond Bar, CA 91765–4182.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT:

Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or wamsley.jerry@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

Table of Contents

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1105.1	Reduction of PM10 and Ammonia Emissions From Fluid Catalytic Cracking Units (FCCU).	11/07/03	06/03/04

On June 30, 2004, EPA found this rule submittal met the completeness criteria in 40 CFR part 51 Appendix V. These criteria must be met before formal EPA review can begin.

B. Are There Other Versions of This Rule?

There are no previous versions of Rule 1105.1 in the SIP.

C. What Is the Purpose of the Submitted Rule?

SCAQMD Rule 1105.1 is designed to limit particulate matter less than 10 microns (PM10) and ammonia emissions from fluid catalytic cracking units at oil refineries. The rule sets emission limits for filterable PM10 and ammonia slip. PM10 and ammonia emissions result from the combination of FCCU emissions and ammonia injection used with electrostatic precipitators (ESP) to control FCCU emissions. Once in the atmosphere, ammonia emissions react with other compounds to produce secondary aerosol PM10. Oil refineries are expected to implement several control technologies to meet the emissions limits, including but not limited to, dry and wet ESPs, sulfur oxide reducing agents, selective catalytic reduction, selective non-catalytic reduction, and wet gas scrubbers.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, PM10 SIP rules must be enforceable (see section 110(a) of the Act), must meet Reasonably Available Control Measure (RACM) requirements for nonattainment areas (see section 189), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates a serious PM nonattainment area (see 40 CFR part 81), so Rule 1105.1 must fulfill RACM and Best Available Control Measure (BACM) requirements.

Guidance and policy documents that we used to help evaluate enforceability and RACM requirements consistently include the following documents.

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

B. Does the Rule Meet the Evaluation Criteria?

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, and SIP relaxations. Section 189 of the Clean Air Act Amendments of 1990 (CAA) required that serious PM nonattainment areas, such as SCAQMD, implement in a stepwise manner all RACM and BACM rules for all major sources and significant PM-10 source categories. The SCAQMD's plan for attaining the PM-10 NAAQS is the regulatory vehicle for determining RACM and BACM rules. For Rule 1105.1, the SCAQMD PM-10 plan defines the FCCU source category as "de minimis" or producing emissions less than or equal to 5% of the PM standard. Consequently, Rule 1105.1 is not designated as either a RACM, or BACM rule in the SCAQMD PM-10 plan. Consequently, our review is limited to enforceability and SIP relaxation criteria. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

We have no additional recommendations regarding Rule 1105.1

D. Public Comment and Final Action

Because EPA believes Rule 1105.1 fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate Rule 1105.1 into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This 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.*). 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).

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). 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. 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.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: April, 20, 2005.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 05-11718 Filed 6-13-05; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[TRI-2005-0004; FRL-7532-4]

RIN 2025-AA17

Addition of Diisononyl Phthalate Category; Community Right-to-Know Toxic Chemical Release Reporting; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, notice of data availability.

SUMMARY: On September 5, 2000, EPA issued a proposed rule, in response to a petition filed under section 313(e)(1) of the Emergency Planning and Community Right-to-Know Act (EPCRA), to add a diisononyl phthalate (DINP) category to the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and section 6607 of the Pollution Prevention Act (PPA). EPA proposed to add this chemical category to the EPCRA section 313 toxic chemical list pursuant to its authority to add chemicals and chemical categories because EPA believes this category meets the EPCRA section 313(d)(2)(B) toxicity criterion. The purpose of

today's action is to inform interested parties that, in an effort to ensure adequate opportunities for input from all affected parties, EPA is making available for public comment a revised hazard assessment for DINP.

DATES: Comments must be received on or before September 12, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. TRI-2005-0004, 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://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:** oei.docket@epa.gov.

- **Mail:** Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. TRI-2005-0004.

- **Hand Delivery:** EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, 20004, telephone: 202-566-1744, Attention Docket ID No. TRI-2005-0004. 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. TRI-2005-0004. 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](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the Federal [regulations.gov](http://www.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](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic

comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at: <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other 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 OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744, and the telephone number for the OEI Docket is 202-566-1752.

FOR FURTHER INFORMATION CONTACT:

Daniel R. Bushman, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-566-0743; fax number: 202-566-0741; e-mail: bushman.daniel@epamail.epa.gov, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1-800-424-9346, in Virginia and Alaska: 703-412-9810 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply To Me?

You may be potentially affected by this notice if you manufacture, process, or otherwise use DINP. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094); 12 (except 1241); or 20 through 39; or industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 <i>et seq.</i>); or 5169; or 5171; or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).
Federal Government	Federal facilities.

This table 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 the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address only, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: OEI Document Control Officer, Mail Code: 2822T, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC, 20460. 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). The EPA will disclose information claimed as CBI only to the extent allowed by the 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 identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Did EPA Propose and What Is the Purpose of This Notice?

In response to a petition to add diisononyl phthalate (DINP) to the EPCRA section 313 list of toxic chemicals, EPA published a proposed rule to add a DINP category to the EPCRA section 313 list (65 FR 53681, September 5, 2000). The proposed rule was based on information contained in the hazard assessment for DINP that was developed in response to the petition (Ref. 1). In response to comments on the proposal, EPA revised its hazard assessment for DINP. The purpose of this notice is to allow the public an opportunity to comment on a revised hazard assessment that EPA has developed for DINP (Ref. 2).

A. What Preliminary Determinations Did EPA Reach in the Proposed Rule?

After a review of the data available at the time, the Agency preliminarily determined that there was sufficient evidence to support the conclusion that DINP can reasonably be anticipated to cause carcinogenicity and liver, kidney, and developmental toxicity. The preliminary findings were summarized as follows.

DINP has been shown to cause developmental toxicity in prenatal rats. This developmental toxicity included significant decreases in the mean body weight of pups from two generations which may result in serious developmental delays in growth throughout the lifetime. In addition, skeletal variations were observed which may interfere with normal nerve function and blood flow. Kidney effects in fetuses were observed which might lead to progressive kidney damage and impaired kidney function.

DINP has been shown to cause chronic liver and kidney toxicity in rats and mice. The liver effects are indicators of the serious liver damage produced by DINP and are early indicators of the tissue damage which leads to DINP-induced tumors. In addition to chronic liver toxicity, biochemical indicators

of chronic kidney toxicity were evident in male and female rats. Also, chronic progressive irreversible kidney damage (nephropathy) occurred in female mice which lead to early mortality.

DINP has been shown to be a liver carcinogen in rats and mice, to induce kidney tumors in male rats, and to increase the incidence of mononuclear cell leukemia. (65 FR 53686, September 5, 2000).

EPA EAPA also stated that:

EPA currently believes that it is reasonable to anticipate that all members of the DINP category as described will exhibit carcinogenicity and liver, kidney, and developmental toxicity in humans and that creating a category of DINP is the most appropriate way to list this class of chemicals. (65 FR 53686, September 5, 2000).

B. Why Has EPA Issued This Notice?

EPA received significant comments on its original hazard assessment for DINP both during the comment period for the proposed rule and in later submissions to the Agency. Based on the comments EPA received, the Agency decided to revise the DINP hazard assessment and subject the document to a peer review process. The revised DINP hazard assessment was reviewed by experts within EPA and then by a group of external peer reviewers. Based on these reviews EPA made additional revisions to the DINP hazard assessment. The comments received from the external peer reviewers and EPA's responses to those comments have been placed in the docket for this notice (Ref. 3). The revisions to the hazard assessment have an impact on the preliminary conclusions that EPA reached in the proposed rule. Therefore, EPA is making the revised DINP hazard assessment available for public comment through the publication of this notice.

III. How Has the Hazard Assessment Changed?

The original DINP hazard assessment has been updated to include the most recent data available on the toxicity of DINP and has been revised based on public comments and on feedback from internal and external peer reviewers. Based on public comment, the revised hazard assessment has been expanded

to include a more extensive discussion of each human health endpoint of concern. The significant substantive changes to the hazard assessment are discussed in the following sections.

A. What Changes Have Been Made to the Discussion of Carcinogenicity?

1. *Liver Cancer.* In the original DINP hazard assessment (Ref. 1), EPA stated that DINP was a liver carcinogen in rats and mice and could reasonably be anticipated to cause cancer in humans. Liver tumors were demonstrated in three independent chronic studies in rats and mice (Refs. 4, 5, and 6). At that time, EPA acknowledged that there was an ongoing scientific discussion regarding the role of peroxisome proliferation and peroxisome proliferation activating receptor- α (PPAR α) activation in rodent liver tumors and its relevance to human cancer.

In accordance with EPA's cancer guidelines (Ref. 7), however, the data were considered insufficient to demonstrate that a response in animals was not relevant to any human situation. Therefore, the default assumption that positive effects in animal studies indicate that DINP could have carcinogenic potential in humans was warranted. Based on this default assumption, EPA's position in the original hazard assessment was that DINP could reasonably be anticipated to cause cancer in humans.

Recently, the Office of Prevention, Pesticides and Toxics Substances (OPPTS) presented a draft of a proposed OPPTS science policy on PPAR α -mediated hepatocarcinogenicity to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP), a Federal advisory committee. The SAP serves as the primary scientific peer review mechanism of OPPTS under Section 25(d) of FIFRA. The guidance document described an approach OPPTS proposed to use to evaluate the scientific information regarding the mode of action of PPAR α -activating chemicals, such as DINP, in rodent liver tumors and the relevance of this mode of action for human liver cancer. EPA is currently reviewing the responses from the FIFRA SAP and will notify the public on a science policy decision. EPA therefore reserves judgment on whether DINP can reasonably be anticipated to cause liver cancer in humans, pending the results of this EPA review. The revised DINP hazard assessment has been updated to include a discussion of EPA's ongoing review.

2. *Mononuclear Cell Leukemia.* In the original DINP hazard assessment (Ref.

1), EPA stated that there were clear, statistically significant increases in the incidences of mononuclear cell leukemia (MNCL) in two independent chronic oral studies using Fischer rats. Fischer rats (F-344) had an increased mortality due to MNCL in DINP-treated rats suggesting that DINP is associated with the elevated incidence, progression and severity of MNCL. The tumor findings may be biologically significant because the time to onset of tumor was shorter and the disease was more severe in treated animals compared to the timing of onset and severity in control animals. EPA believes that it is therefore highly unlikely that these findings were unrelated to treatment. EPA notes, however, that there are several sources of uncertainty in the interpretation of the MNCL data. These include a high and variable background rate of MNCL and a lack of information on the mode of action for induction of MNCL. Furthermore, some scientists believe that MNCL may be a rodent-specific cancer of unclear relevance to human cancer. EPA is reviewing the scientific question of the biological relevance of MNCL and human cancer. As a result of these scientific uncertainties, EPA reserves judgment on the human significance of MNCL and whether DINP can reasonably be anticipated to cause cancer in humans.

Because the data currently available do not permit a clear conclusion on the relevance of DINP-induced liver tumors and MNCL at this time, EPA reserves judgment on whether DINP can reasonably be anticipated to cause cancer in humans.

B. What Changes Have Been Made to the Discussion of Chronic Liver Toxicity?

In the original DINP hazard assessment (Ref. 1), EPA stated that DINP could reasonably be anticipated to cause chronic liver toxicity based on increased liver weight, increased liver enzyme activities, and chronic liver lesions based on two chronic studies in rats (Refs. 4 and 5). In the revised hazard assessment, the chronic liver lesion is described in more detail and identified as spongiosis hepatitis. The incidence of spongiosis hepatitis was dose-related and significantly elevated in male rats chronically treated with DINP in two independent studies conducted by different laboratories. The incidence of spongiosis hepatitis was not elevated in female rats or in male or female mice. Based on the available data, the Agency has identified a No Observed Adverse Effect Level (NOAEL) of 15 milligrams per kilogram per day (mg/kg/day) and a Lowest Observed Adverse Effect Level (LOAEL) of 152

mg/kg/day for the Lington *et al.* study (Ref. 4) and a NOAEL of 88 mg/kg/day and a LOAEL of 359 mg/kg/day for the Moore study (Ref. 5), based on indications of serious liver damage (*i.e.*, a statistically significant increased incidence of spongiosis hepatitis and increased liver weight and liver enzyme activities) in male rats chronically exposed to DINP for two years.

The Agency believes that the existing data support the conclusion that the increased incidence of spongiosis hepatitis in dosed rats is clearly related to DINP treatment. In further evaluating the data for hepatic spongiosis, the Agency considered (1) The possibility that the occurrence of spongiosis hepatitis and induction of peroxisome proliferation were related; (2) the possibility that the occurrence of spongiosis hepatitis was a consequence of MNCL; (3) the relationship of spongiosis hepatitis to hepatocellular cancer; and (4) the human relevance of hepatitis spongiosis.

EPA believes that the occurrence of spongiosis hepatitis is not likely to be related to the occurrence of peroxisome proliferation, hepatocellular cancer, or MNCL. Spongiosis hepatitis is a lesion of the perisinusoidal cells of the liver (the Ito cells) whereas the carcinogenic and other toxic effects of DINP on the liver involved hepatocytes, which are the predominant cell type in the liver. This lesion has been found in livers of rodents and fish following exposure to substances (*e.g.*, nitrosamines) that induce cancer in these species (Ref. 8). Both chronic studies of DINP (Refs. 4 and 5) reported increased incidences of treated male rats with spongiosis hepatitis. EPA has determined that spongiosis hepatitis is relevant to human health and that determination is discussed in detail in the revised hazard assessment (Ref. 2, section II.E.1).

Spongiosis hepatitis was also considered to be a significant finding by the authoritative scientific panel, the U.S. Consumer Product Safety Commission's (CPSC) Chronic Hazard Advisory Panel (CHAP) on DINP in their final report (Ref. 9). In addition to the CPSC panel report, a Histopathology Peer Review and Pathology Working Group convened by Experimental Pathology Laboratories (ELP) (Ref. 10) independently evaluated the liver slides from rats chronically treated with DINP and confirmed that the spongiosis hepatitis was increased in male rats of both chronic rodent studies. These findings support EPA's position that chronic liver toxicity is an endpoint of concern for DINP. At the time of the development of the original DINP hazard assessment, EPA had not

reviewed the ELP report (Ref. 10), or seen the CHAP report (Ref. 9) that discusses the ELP report conclusions because the final CHAP report was not available.

IV. How Does the Revised Hazard Assessment Impact EPA's Previous Conclusions About the Toxicity of DINP?

In the previous DINP hazard assessment (Ref. 1), carcinogenicity was determined to be a significant concern for DINP. However, based on the revised hazard assessment (Ref. 2), at this time EPA reserves judgment on whether cancer is an endpoint of concern for DINP. This conclusion may change in the future depending on how EPA resolves the issues concerning the human relevance of the types of tumors that DINP has been shown to cause. The revised hazard assessment also provides a more detailed and specific discussion about the ability of DINP to cause chronic liver toxicity than that contained in the previous hazard assessment. The revised discussion on chronic liver toxicity provides additional support to the previous conclusion that DINP causes chronic liver toxicity.

The revised DINP hazard assessment does not affect the previous conclusions from the original DINP hazard assessment that developmental and chronic kidney toxicity are endpoints of concern for DINP. In addition, nothing in the revised DINP hazard assessment affects EPA's previous conclusion that the addition of DINP as a category of chemicals, rather than individual chemical listings, would be appropriate.

V. What Type of Comments Is EPA Interested In Receiving?

EPA is requesting comments on all parts of the revised hazard assessment. However, EPA is specifically interested in comments on the sections of the revised hazard assessment that deal with carcinogenicity and chronic liver toxicity. EPA also requests commenters to provide any additional data or information on the human relevance of any of the adverse effects discussed in the revised hazard assessment.

VI. References

EPA has established an official public docket for this action under Docket ID No. TRI-2005-0004. The previous docket number for the proposed rule was OEI-100004 and was assigned prior to the development of EPA's electronic public docket and comment system. Therefore, EPA is creating a new electronic docket number for this action. All the materials submitted to docket number OEI-100004 have been transferred to docket number TRI-2005-0004. The public docket includes information considered by EPA in developing this proposed rule, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

1. USEPA, OEI. 2000. Technical Review of Diisononyl Phthalate. Office of Environmental Information, Becki Madison, Christine Augustyniak, Ron Bloom, Candace Brassard, Ossi Meyn, Nicole Paquette, Pam Russell, and John Scalera.

2. USEPA, OEI. 2005. Revised Technical Review of Diisononyl Phthalate, March 4, 2005. Office of Environmental Information, Environmental Analysis Division, Analytical Support Branch. Amy Newman, Candace Brassard, Kathryn Montague, Nicole Paquette, Ph.D., and John Scalera.

3. USEPA, OEI. 2005. Response to External Peer Review Comments on the Revised Technical Review for Diisononyl Phthalate, April 2005.

4. Lington, A.W.; Bird M.G.; Plutnick, R.T.; Stubblefield, W.A.; and Scala, R.A. 1997. Chronic toxicity and carcinogenic

evaluation of diisononyl phthalate in rats. *Fundam. Appl. Toxicol* 36: 79-89.

5. Moore, M.R., 1998. Oncogenicity study in rats with di(isononyl)phthalate including ancillary hepatocellular proliferation and biochemical analyses. TSCATS Doc# 89980000308. Old Doc 8EHQ099813083. Fiche # OTS05562832. Submitted by Aristech Chemical Corporation. Produced by Covance Laboratories 2598-104.

6. Moore M.R., 1998. Oncogenicity study in mice with di(isononyl)phthalate including ancillary hepatocellular proliferation and biochemical analyses. TSCATS Doc# 89990000046. Old Doc 8EHQ119813083. Fiche # OTS05562833. Submitted by Aristech Chemical Corp. Produced by Covance 2598-105.

7. USEPA. 1999. Draft Revised Guidelines for Carcinogen Risk Assessment. NCEA-F-0644, July 1999.

8. Stoebel, P.; Mayer, F.; Zerban, H., Bannasch, P. 1995. Spongiotic pericytoma: a benign neoplasm deriving from the perisinusoidal cells in rat liver. *Am. J. Pathol.* 146:903-913.

9. Chronic Hazard Advisory Panel on Diisononyl Phthalate. Report to the U.S. Consumer Product Safety Commission. June 2001. U.S. Consumer Product Safety Commission, Bethesda, MD.

10. Experimental Pathology Laboratories, 1999. Histology peer review and pathology working group review of selected lesions of the liver and spleen in male and female F344 rats exposed to DINP. EPL Project number 303-013, Pathology Report.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: June 7, 2005.

Kimberly T. Nelson,

Assistant Administrator for Office of Environmental Information and Chief Information Officer.

[FR Doc. 05-11664 Filed 6-13-05; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 70, No. 113

Tuesday, June 14, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma: Proposed Land and Resource Management Plan Amendment for the Valle Vidal, Carson National Forest, Taos and Colfax Counties, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service is preparing an Environmental Impact Statement (EIS) to consider and disclose the effects of amending the Carson National Forest's 1987 Land and Resource Management Plan (hereafter called Forest Plan) to incorporate standards and guidelines for the management of the Valle Vidal area of the Carson National Forest. The proposed Forest Plan amendment includes a recommendation for a special area designation of the "Upper Ponil Botanical Area."

DATES: Comments on the proposed amendment should be submitted before September 15, 2005.

The Draft EIS is expected to be available for public review sometime in February or March 2006. At that time, a Notice of Availability for the Draft EIS will be published in the **Federal Register** and a 90-day comment period will follow. The Final EIS is scheduled to be completed in September 2006.

ADDRESSES: Comments concerning the proposed amendment should be sent to Carson National Forest, ATTN: Valle Vidal Forest Plan Amendment, 208 Cruz Alta Road, Taos, NM 87571. E-mail comments may be sent to comments-southwestern-carson@fs.fed.us. "Valle Vidal Forest Plan Amendment" must be in the subject line of the e-mail.

FOR FURTHER INFORMATION CONTACT: David Seesholtz, Forest Planner, Carson National Forest, at (505) 758-6210.

Additional information related to the proposed amendment can be obtained from the Forest's Web page at <http://www.fs.fed.us/r3/carson/> or directly from the Forest on compact disc or a paper copy.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed action.

Purpose and Need for Action

In 1982, Pennzoil Corporation donated 101,794 acres (Valle Vidal) to the American people. Due to the timing of the donation, the lack of resource inventories, and the fact the Carson National Forest had already begun the development of its Land and Resource Management Plan (Forest Plan), the management of the Valle Vidal was only partially considered in the development of the Forest Plan. Timber suitability was analyzed as part of plan development, however a desired condition and standards and guidelines for the Valle Vidal were never established. A Multiple Use Area Guide was developed in October 1982 and provides general direction for the Valle Vidal.

In order to bring management direction for the Valle Vidal into full conformance with the Carson National Forest's Forest Plan, an amendment is needed to establish Forest Plan natural resource goals, objectives, standards and guidelines, and desired future condition for the Valle Vidal. The plan amendment will speak directly to the desired condition, with standards and guidelines needed to meet this desired condition.

Proposed Action

The Forest Service proposes to provide additional guidance for the Valle Vidal Unit on the Carson National Forest through a Forest Plan amendment. This area was identified as Management Area 21 in the Land and Resource Management Plan (1986).

The proposed action would establish a long-term desired condition for the Valle Vidal and would incorporate Forest-wide prescriptions and specific Management Area prescriptions (standards and guidelines) from the current Forest Plan to apply on the Valle Vidal.

Area specific standards and guidelines for the Valle Vidal are also

proposed. Standards and guidelines specific to the Valle Vidal would take precedence over Forest-wide standards and guidelines. Generally these standards compliment the Forest-wide standards.

The proposed action would recommend a 4,083-acre botanical area as a Special Area (Management Area 19). A few specific standards and guidelines are proposed for this management area.

A detailed description of the Proposed Action can be accessed via the Internet at <http://www.fs.fed.us/r3/carson/>. This site also contains background information about the management of the Valle Vidal and discussion on why additional management direction is needed for the area.

Public Involvement

Over the last several months, the Forest has received from the public over 5,000 form letters, 120 post cards, 600 individual letters, a petition and many phone calls expressing their views on the management of the Valle Vidal. Open house informational meetings were held in Taos, Raton and Santa Fe earlier this year. Comments raised during these meetings, as well as other public comments, helped in formulating the proposed action is largely to formalize the current management strategy.

Additional open house meetings will be held in July and August during the scoping period. These meetings are tentatively scheduled for Taos, Raton, and Santa Fe. Due to the large amount of public interest expressed in the development of the proposed action the scoping will run for 90 days.

Preliminary Issues and Alternatives

The Forest Service has developed the proposed action to meet the purpose and need for action with the best information available—it is not a decision. This proposal is intended to facilitate public involvement in identifying pertinent issues, developing meaningful alternatives, and analyzing relevant effects. A range of alternatives, including the no action alternative, will be developed based upon issues identified during our scoping process and the associated analysis.

Lead and Cooperating Agencies

USDA Forest Service, Carson National Forest will serve as the lead agency for this analysis.

Responsible Official

The Forest Supervisor for the Carson National Forest of the Southwestern Region of the USDA Forest Service is the Responsible Official.

Nature of Decision To Be Made

Forest Plans define the direction for managing the National Forests. This amendment will provide the management direction for the Valle Vidal and provide the foundation for future activities. The amendment defines the overall management vision of the Valle Vidal and identifies specific standards and guidelines that will help move management of the Valle Vidal towards this vision. The decision made through this amendment would serve as Forest Plan direction until the Forest Plan is further amended or revised.

Other analyses may be completed in the future to determine the appropriate level of activities to occur by a specific program. The Leasing Analysis required to determine whether to make certain lands available to development of natural gas resources is an example of possible future analyses. Future decisions would have to be consistent with the management direction provided through this current analysis or would have to amend this direction.

Comment Requested

The Forest Service would like to know of any issues, concerns, and/or suggestions the public, Native American tribes, or other government agencies have about the proposal. Comments should be as fully formed as possible to assist in the analysis. If you have any questions, or if something is unclear, contact David Seesholtz at 505-758-6210 before submitting your comments.

Although comments are welcome at any time, they will be most effective if received by September 15, 2005. Send comment to: Carson National Forest, ATTN: Valle Vidal Plan Amendment, 208 Cruz Alta Road, Taos, NM 87571.

Alternately, e-mail your comments to comments-southwestern-carson@fs.fed.us. "Valle Vidal Forest Plan Amendment" must be in the subject line of the e-mail.

Reviewer's Obligation: Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and

considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27 (d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within seven days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement. **PAuthorization:** National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321-346); Council on Environmental Quality Regulations (40 CFR parts 1500-1508); U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR part 1b).

Dated: June 8, 2005.

Martin D. Chavez Jr.,

Forest Supervisor, Carson National Forest.

[FR Doc. 05-11702 Filed 6-13-05; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Dakota Prairie Grasslands; North Dakota and South Dakota; Dakota Prairie Grasslands Noxious Weed Management Strategy EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Dakota Prairie Grasslands (DPG) proposes to use an integrated approach to treat and control noxious weeds on approximately 35,000 acres of existing infestation sites, and 8,000 acres of new or previously unknown acres in a manner consistent with Dakota Prairie Grasslands Land and Resource Management Plan direction and applicable laws. The Environmental Impact Statement (EIS) will analyze the methods to be used in an integrated approach, and disclose the environmental effects of the proposal and alternatives.

DATES: Comments concerning the scope of the analysis must be received within 30 days of publication of this notice in the Federal Register. The draft EIS is expected by September 2005 and the final EIS is expected by February 2006.

ADDRESSES: Send written comments to Sheila McNee, Noxious Weed EIS, Dakota Prairie Grasslands, 240 W. Century Ave., Bismarck, ND 58503 or e-mail your comments to comments-northern-dakota-prairie@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Sheila McNee, Project Leader, Dakota Prairie Grasslands, USDA Forest Service at the above address or call (701) 250-4443.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

An aggressive and effective weed control program is dictated by U.S. Forest Service policies (FSM 2080), the DPG Land and Resource Management Plan (Grasslands Plan), other Forest Service objectives, and by the February 3, 1999 Executive Order 13112 "to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological and human health impacts that invasive species cause." The DPG has been treating noxious weeds on each Ranger District under previous NEPA decisions including the 1986 Custer National Forest Noxious Weed Environmental Impact Statement; however, an updated noxious weed control analysis is needed to address newly listed noxious weeds species, to identify additional acres of noxious

weed infestations, to ensure we are complying with the revised Grasslands Plan, and to incorporate the use of new, more effective herbicides, technologies, and biological controls as appropriate.

Proposed Action

The Dakota Prairie Grasslands consists of four National Grasslands and two experimental forests. The Forest Service proposes to treat noxious weeds using an integrated approach on approximately 14,500 acres of existing infestation sites distributed across the Little Missouri, Cedar River and Grand River National Grasslands and the Denbigh and Souris Experimental Forests. This proposal also allows up to 15 percent or about 2,000 additional acres of new or previously unknown infestations to be treated as they are discovered. On the Sheyenne National Grassland, all 20,500 acres of existing infestation sites are proposed for treatment. The proposal would allow treatment up to 30 percent more or 6,000 acres of new or previously unknown infestations on the Sheyenne Ranger District. Some acres may need annual treatments while others may only need to be treated once.

An integrated management approach would be used to control noxious weeds. This approach may combine methods where it is deemed appropriate and effective. Proposed methods include the following: (1) Mechanical methods, such as hand pulling, mowing, or burning. (2) Revegetation, where competitive native vegetation is seeded to reduce noxious species, possibly after other treatments to remove the noxious weeds. (3) Grazing with livestock such as goats or sheep. (4) Biological control through the use of predators, parasites, and pathogens. (5) Herbicide control using ground-based and aerial based application methods.

Possible Alternatives

A No Action alternative will be analyzed. No treatments would occur, except for those biological controls already in place on the ground.

Using public and internal input, the Forest Service team will identify additional action alternatives to the proposed action, and determine which ones need to be fully analyzed.

Responsible Official

David M. Pieper, Grasslands Supervisor, is the responsible official. See address under the **ADDRESSES** section above.

Nature of Decision To Be Made

The Responsible Official will decide what level of weed control to

implement, where and what kind of weed controls will be used, what mitigation measures will be required, what monitoring will be required to ensure that project objectives are being met and what, if any, Grassland Plan amendments are required.

Scoping Process

The Forest Service mailed scoping packages on the proposed action to approximately 177 potentially interested or affected individuals, organizations, local and state governments, and local, State and Federal agencies on March 31, 2004, with a request for responses by April 30, 2004. Eleven comments were received. In the cover letter, it was stated that the Forest Service may prepare either an environmental assessment or an environmental impact statement, but that if aerial spraying was considered, and/or scoping results or further analysis indicated that the project might have significant environmental impacts, an environmental impact statement would be prepared.

With the inclusion of aerial spraying, the Forest Service has decided to prepare an environmental impact statement. This notice of intent invites additional public comment on the proposal and initiates the preparation of the environmental impact statement. Due to the scoping effort already conducted, no further scoping meetings or mailings are planned. The public is encouraged to take part in the process and to visit with Forest Service officials any time during the analysis and prior to the decision. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement. Two minor changes have been made since the original scoping. The total number of acres proposed to be treated has increased 2,000 acres and the no action alternative is now no treatment instead of continuing the existing management.

Preliminary Issues

The following are the preliminary issues identified for this project:

(1) Treatments may have adverse effects on the prairie fringed orchid, a federally threatened plant species that occurs on the Sheyenne National Grassland.

(2) Treatments may have adverse effects to soil and water quality.

(3) Treatments may have adverse effects on sensitive butterfly species or their habitats.

(4) Treatments may have adverse effects on fish species or their habitats.

(5) Aerial application of herbicides may have adverse effects on non-target species.

(6) The use of herbicides for invasive weed control may cause acute (short term) or chronic (long term) health problems for people who come into contact with the herbicides and/or treated areas.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental

impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 31, 2005.

Thomas J. Turck,

Planning Staff Officer.

[FR Doc. 05-11683 Filed 6-13-05; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Project Proposal/Possible Action, (5) Web site Update, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on June 27, 2005, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968-1815; e-mail ggaddini@fs.fed.us.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after

the meeting. Public input sessions will be provided and individuals who made written requests by June 24, 2005 will have the opportunity to address the committee at those sessions.

Dated: June 7, 2005.

James F. Giachino,

Designated Federal Official.

[FR Doc. 05-11677 Filed 6-13-05; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Wednesday June 29, 2005 at 6 p.m. at the Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

DATES: June 29, 2005.

ADDRESSES: Kootenai National Forest, Supervisor's Office, 1101 U.S. Hwy 2 West, Libby, Montana.

FOR FURTHER INFORMATION CONTACT:

Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293-6211, or e-mail bedgmon@fs.fed.us.

SUPPLEMENTARY INFORMATION: Agenda topics include acceptance of project proposals until July 1, for funding in fiscal year 2006, review of submitted proposals, and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: June 6, 2005.

Mark Romey,

Acting Forest Supervisor.

[FR Doc. 05-11698 Filed 6-13-05; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting, which is open to the public.

DATES: Thursday, June 16, 2005, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT:

Doug Gochnour, Designated Federal Officer, at 208-392-6681 or e-mail dgochnour@fs.fed.us.

Dated: June 8, 2005.

Richard A. Smith,

Forest Supervisor, Boise National Forest.

[FR Doc. 05-11700 Filed 6-13-05; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Floodwater Retarding Structure No. 18A of the Little Elm and Laterals Watershed of the Trinity River Watershed, Collin County, TX

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure (FRS) No. 18A of the Little Elm and Laterals Watershed of the Trinity River Watershed, Collin County, Texas.

FOR FURTHER INFORMATION CONTACT:

Larry D. Butler, Ph.D., State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501-7682, Telephone (254) 742-9800.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Larry D. Butler, Ph.D, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure No. 18A to maintain the present level of flood control benefits and comply with the current performance and safety standards.

To meet current performance and safety standards for high hazard dams, the modification of FRS No. 18A will include vertically raising the dam's effective elevation by 1.8 feet, flattening the front and back slopes of the dam to 3:1, removing the orifice plate, and installing an impact basin below the principal spillway. Approximately 10 acres will be disturbed during construction. Disturbed areas will be planted to plants that have wildlife values. The proposed work will not affect any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (section 313, Pub. L. 106-472). Total project cost is estimated to be \$916,400 of which \$667,400 will be paid from the Small Watershed Rehabilitation funds and \$249,000 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Dr. Larry D. Butler, Ph.D, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: June 7, 2005.

Larry D. Butler,

State Conservationist.

[FR Doc. 05-11742 Filed 6-13-05; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Floodwater Retarding Structure Nos. 1A, 2B, 4, and 17 of the East Fork Above Lavon Watershed of the Trinity River Watershed, Collin County, TX

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure (FRS) Nos. 1A, 2B, 4, and 17 of the East Fork Above Lavon Watershed of the Trinity River Watershed, Collin County, Texas.

FOR FURTHER INFORMATION CONTACT:

Larry D. Butler, Ph.D, State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501-7682, Telephone (254) 742-9800.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Larry D. Butler, Ph.D, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure Nos. 1A, 2B, 4, and 17 to maintain the present level of flood control benefits and comply with the current performance and safety standards.

The modification of FRS Nos. 1A, 2B, 4, and 17 will include the addition of principal spillway and auxiliary spillway capacity to each structure to meet current performance and safety standards for high hazard dams. Minimal acreage will be disturbed during construction. Disturbed areas will be planted to plants that have wildlife values. The proposed work will not affect any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (section 313, Pub. L. 106-472). Total project cost is estimated to be \$6,751,900 of which \$4,799,100 will be paid from the Small Watershed Rehabilitation funds and \$1,952,800 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Dr. Larry D. Butler, Ph.D, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: June 7, 2005.

Larry D. Butler,

State Conservationist.

[FR Doc. 05-11743 Filed 6-13-05; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 27-2005)

Foreign-Trade Zone 101, Clinton County, Ohio, Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Airborne FTZ, Inc., grantee of FTZ 101, requesting authority to expand FTZ 101 to a site in Fayette County, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended, (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 3, 2005.

FTZ 101 was approved on May 1, 1984 (Board Order 250, 49 F.R. 19688, 5/9/84), and expanded on December 29, 1982 (Board Order 623, 58 F.R. 537, 1/6/93). FTZ 101 currently consists of four sites (575 acres) on the former Clinton County Air Force Base in Wilmington, Ohio: *Site 1* (178 acres) at the Airborne Commerce Park Sort Center & Warehouse; *Site 2* (41 acres) at the Airborne Commerce Park Stock Exchange; *Site 3* (114 acres) on Route 73, part of the Airborne Commerce Park;

and Site 4 (242 acres) on McCoy Road, part of the Airborne Commerce Park.

The applicant is now requesting authority to expand the zone to include a site in Fayette County, Ohio. The proposed site consists of 1079 acres at the Central Ohio Logistics Center in Jefferson Township.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, D.C. 20005; or
2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, D.C. 20230.

The closing period for their receipt is August 15, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 29, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 36 East 7th Street, Suite 2650 Cincinnati, OH 45202.

Dated: June 3, 2005

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05-11740 Filed 6-13-05; 8:45 am]

Billing Code: 3510-DS-S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 26-2005)

Foreign-Trade Subzone 84C-La Porte, Texas, Expansion of Subzone and of Manufacturing Authority, E.I. du Pont de Nemours and Company, Inc., (Crop Protection Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of Foreign-Trade Zone 84, to expand Subzone 84C, at the

E.I. du Pont de Nemours and Company, Inc. (DuPont) plant located at one existing site and one proposed site in La Porte, Texas, and to expand the scope of manufacturing authority under zone procedures for Subzone 84C. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 27, 2005.

Subzone 84C was approved by the Board in 1990 at one site located at 12501 Strang Road in La Porte (Board Order 476, 55 FR 28263, 7/10/1990). The applicant is now proposing to expand Subzone 84C to include a second site (including up to 2 buildings with 289,237 square feet of enclosed space on 35.4 acres) at 11505 Highway 225 in La Porte.

DuPont also seeks to expand the scope of manufacturing activity authorized to be conducted under zone procedures at Subzone 84C. DuPont's original authority was granted for the manufacture of hydrofluoric acid. The company now seeks to manufacture, test, package and warehouse certain intermediate chemicals for crop protection products, including sulfonylurea herbicides. The intermediate chemicals will be transferred to other DuPont facilities, including existing subzones, for further manufacturing into finished products.

There are two specific inputs and two specific finished intermediates that DuPont intends to produce initially under expanded FTZ manufacturing authority. The inputs are classifiable under HTSUS categories 2930.90 and 2933.39, while the finished intermediates both are classifiable under category 2935.00. The application also requests authority to include a broad range of inputs and finished crop protection products that DuPont may produce under FTZ procedures in the future. (New major activity in these inputs/products could require review by the FTZ Board.) General HTSUS headings of inputs include: 2529, 2807, 2811, 2813, 2814, 2815, 2825, 2826, 2827, 2829, 2830, 2833, 2835, 2836, 2837, 2838, 2851, 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 2935, 2938, 2939, 2940, 2942, 3301, 3302, 3402, 3808, 3815, 3824, 3901, 3912, 3919, 3920, 3921, 3923, 3926, 4817, and 4819. Duty rates for these materials range from duty-free to 7.2% ad valorem. Finished products that may be produced from the inputs

listed above include these general HTSUS headings: 2811, 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 2935, 2938, 2939, 2942, 3808, and 3824. Duty rates for these products range from duty-free to 6.5% ad valorem.

The proposed expanded scope of FTZ manufacturing authority would exempt DuPont from Customs duty payments on foreign inputs if used in production for export. On its domestic shipments, DuPont could apply to foreign inputs lower duty rates that apply to the finished products, where applicable. Some of DuPont's domestic shipments may be zone-to-zone transfers from the La Porte plant of intermediate inputs to be used in manufacturing at other U.S. DuPont facilities.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building--Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or
2. Submissions via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB--Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is August 15, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 29, 2005.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 15600 John F. Kennedy Blvd., Suite 530, Houston, TX 77032.

Dated: May 31, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05-11741 Filed 6-13-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration****[A-588-804]****Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan; Amended Final Results of Antidumping Duty Administrative Review Pursuant to Final Court Decision**

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

SUMMARY: On November 15, 2001, in response to its action in *NSK Ltd. and NSK Corporation, Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A, NTN Bearing Corporation of America, NTN Corporation, American NTN Bearing Manufacturing Corporation, NTN Driveshaft, Inc. and NTN-Bower Corporation, and Nippon Pillow Block Sales Co., Ltd. and FYH Bearing Units USA Inc. v. United States and The Torrington Company (NSK Ltd. v. United States)*, Consol. Court No. 97-02-00216, Slip. Op. 01-69 (CIT June 6, 2001), the Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) remand determination affecting final assessment rates for the administrative review of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan for the period of review May 1, 1994, through April 30, 1995. The merchandise covered by these reviews is ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Because the appeals have been dismissed and there is now a final and conclusive court decision in this action, we are amending our final results of review and we will instruct U.S. Customs and Border Protection to liquidate entries subject to these reviews.

EFFECTIVE DATE: June 14, 2005.

FOR FURTHER INFORMATION CONTACT: John Holman or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3683 or (202) 482-4477, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On January 15, 1997, the Department published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany,*

Italy, Japan, Singapore, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081 (January 15, 1997), as amended by *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan and the United Kingdom: Amended Final Results of Antidumping Duty Administrative Reviews*, 62 FR 45795 (August 29, 1997) (collectively *AFBs 6*), which covered the period of review (POR) May 1, 1994, through April 30, 1995. The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs.

NSK Ltd. and NSK Corporation (collectively NSK), Koyo Seiko Co., Ltd., and Koyo Corporation of U.S.A (collectively Koyo), NTN Bearing Corporation of America, NTN Corporation, American NTN Bearing Manufacturing Corporation, NTN Driveshaft, Inc., and NTN-Bower Corporation (collectively NTN), Nippon Pillow Block Sales Co., Ltd., FYH Bearing Units USA Inc. (collectively NPB), and The Torrington Company (collectively Torrington) appealed the Department's decisions in *AFBs 6*. On June 6, 2001, the CIT issued its ruling in *NSK Ltd. v. United States*, Consol. Court No. 97-02-00216, Slip Op. 01-69 (CIT June 6, 2001), remanding to the Department the final results in *AFBs 6* as follows: (1) To exclude any transactions that were not supported by consideration from NSK's U.S. sales database; (2) to include the imputed inventory carrying costs in the calculation of the constructed export-price offset for NSK when matching constructed export-price sales to constructed value; (3) to reconsider NSK's supplier relationship; (4) to reconsider the Department's determination that a certain model of Koyo's was outside the ordinary course of trade; (5) to reconsider its determination that a certain home-market ball bearing of Koyo's could be compared to U.S. sales because it is a foreign like product; (6) to recalculate the dumping margins accordingly. This remand affected NSK and Koyo directly with respect to the antidumping duty orders on BBs and CRBs from Japan.

On September 4, 2001, the Department filed its final results of redetermination with the CIT. See *Final Results of Redetermination Pursuant to Court Remand in Administrative Review of the Antidumping Orders on Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from Japan* (September 4, 2001) (Remand Results). In its redetermination, the Department excluded any transactions that were not

supported by consideration from NSK's U.S. sales databases and adjusted the dumping margins accordingly. The Department also calculated the inventory carrying costs for constructed value in the same manner as indirect selling expenses for constructed value, and it included the inventory carrying costs in the calculation of the constructed export-price offset. As a result of the Department's redetermination, NSK's weighted-average margins for the POR changed from 12.61 percent to 12.57 percent with respect to BBs and changed from 21.61 percent to 21.51 percent with respect to CRBs. The Department's redetermination did not result in any changes for Koyo's weighted-average margins or duty-assessment rates. On November 15, 2001, the CIT affirmed the Department's Remand Results in their entirety. See *NSK Ltd. v. United States*, Consol. Court No. 97-02-00216, Slip. Op. 01-133 (CIT November 15, 2001).

NSK, NTN, and Torrington appealed the CIT's remand affirmation but later filed motions with the United States Court of Appeals for the Federal Circuit (CAFC) to sever and dismiss their appeals voluntarily. On February 23, 2004, in response to motions of voluntary dismissal by NSK and Torrington in *NSK Ltd. v. United States*, appeal numbers 02-1172 and 02-1173, the CAFC granted the unopposed motions and dismissed the appeals. On July 19, 2004, in response to a motion of voluntary dismissal by NTN in *NSK Ltd. v. United States*, appeal number 02-1171, the CAFC granted the unopposed motion and dismissed the appeal.

Because all appeals have been dismissed, there is now a final and conclusive court decision with respect to the companies affected by this litigation (Koyo, NSK, NTN, and NPB), pursuant to section 516A(e) of the Tariff Act of 1930, as amended. We are amending our final results of review for these companies and we will instruct U.S. Customs and Border Protection (CBP) to liquidate the relevant entries subject to these reviews in accordance with our remand results.

Assessment of Duties

We are now amending the final results of the 1994-1995 administrative reviews of the antidumping duty orders on BBs and CRBs from Japan to reflect revised weighted-average margins for NSK. We determine that revised weighted-average margins of 12.57 percent exist for NSK on BBs and 21.51 percent for NSK on CRBs from Japan for the period May 1, 1994, through April

30, 1995. There were no other changes to the final margins we calculated for other companies as a result of litigation.

Accordingly, the Department will determine and CBP will assess appropriate antidumping duties on entries of the subject merchandise produced or exported by the reviewed companies. Individual differences between U.S. price and normal value may vary from the above percentages. The Department will issue assessment instructions to CBP within 15 days of publication of this notice.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: June 8, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-3066 Filed 6-13-E5; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[485-806]

Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review.

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

SUMMARY: On December 7, 2004, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of certain hot-rolled carbon steel flat products from Romania. This review covers one manufacturer/exporter of the subject merchandise. The period of review (POR) is November 1, 2002, through October 31, 2003. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the "Final Results of Review" section.

EFFECTIVE DATE: June 14, 2005.

FOR FURTHER INFORMATION CONTACT: David Layton or Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0371 and (202) 482-4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2004, the Department published the preliminary results of the antidumping duty administrative review of certain hot-rolled carbon steel flat products from Romania. *See Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 70644 (December 7, 2004) (*Preliminary Results*). The review covers one manufacturer/exporter, S.C. Ispat Sidex S.A. (Sidex).

Romania's designation as a non-market-economy (NME) country remained in effect until January 1, 2003.¹ Since the first two months of the POR fell before Romania's graduation to market-economy status and the last ten months of this POR came after its graduation, in its antidumping questionnaire to Ispat Sidex, dated January 26, 2004, the Department determined that it would treat Romania as an NME country from November 1, 2002, through December 31, 2002, and a market-economy (ME) country from January 1, 2003, through October 31, 2003. Ispat Sidex stated in its February 23, 2004, response to the Department's ME Section A questionnaire that it made no sales of subject merchandise during the 10-month ME period. In a separate February 23, 2004, submission, Ispat Sidex provided documentation to support its claim that it had no sales of subject merchandise during the ME portion of the POR. The Department corroborated this claim using U.S. Customs and Border Protection (CBP) import data. See Decision Memorandum to Gary Taverman (March 9, 2004) available in the Department's Central Records Unit, room B099, of the main Commerce building (CRU). Therefore, in the section of this notice entitled "Final Results of Review", we have calculated a weighted-average dumping margin for the NME portion of the POR because we found no sales of subject merchandise during the ME portion of the POR. This

¹ In *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review*, 68 FR 12672, 12673 (March 17, 2003), the Department reviewed the non-market-economy status of Romania and determined to reclassify Romania as a market economy for purposes of antidumping and countervailing duty proceedings, pursuant to section 771(18)(A) of Tariff Act of 1930 as amended, effective January 1, 2003. See Memorandum from Lawrence Norton, Import Policy Analyst, to Joseph Spetrini, Acting Assistant Secretary for Import Administration: Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania-Non-Market Economy Status Review (March 10, 2003).

weighted-average figure represents the dumping margin for the entire POR.

We invited parties to comment on our preliminary results of review. Sidex and a domestic interested party, United States Steel Corporation (U.S. Steel), filed case briefs on January 6, 2005, and rebuttal briefs on January 18, 2005.

On April 13, 2005, the Department published in the **Federal Register** a notice extending the final results of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Romania until no later than May 6, 2005. *See Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Romania*, 70 FR 19417 (April 13, 2005).

On May 17, 2005, the Department published in the **Federal Register** a second notice further extending the final results until no later than June 6, 2005. *See Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Romania*, 70 FR 28275 (May 17, 2005).

Scope of the Order

The products covered by the order are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included within the scope are vacuum degassed, fully stabilized steels (commonly referred to as interstitial-free (IF) steels), high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such

as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of the order unless otherwise excluded. The following products, by way of example, are outside or are specifically excluded from the scope:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506). Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is classified in the HTSUS at the following subheadings: 7208.10.15.00,

7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Duty Absorption

On January 23, 2004, U.S. Steel requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of Tariff Act of 1930 as amended (the Act) provides that, if requested, the Department will determine during an administrative review initiated two or four years after the publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter if the subject merchandise is sold in the United States through an affiliated importer. In this case, Ispat Sidex sold to the United States through an importer that is affiliated within the meaning of section 771(33) of the Act. Because this review was initiated two years after the publication of the antidumping duty order, we made a duty-absorption determination in this segment of the proceeding. Accordingly, on November 29, 2004, we issued a request to Sidex to provide information on whether it absorbed any antidumping duties on sales of subject merchandise during the POR. We received Sidex's response on

December 7, 2004, and issued a preliminary determination on March 18, 2005, that no duty absorption had occurred during the POR. *See* Memorandum to Wendy Frankel from David Layton: Preliminary Determination Regarding Duty Absorption (March 18, 2005). We provided parties with an opportunity to comment, but received no comments. Therefore, for these final results, we determine that no antidumping duties were absorbed during the POR.

Separate Rates

Because we are conducting this review in accordance with 19 CFR 351.408, we are applying our NME methodology for Sidex in the first two months of this review (November–December 2002). Sidex has requested a separate, company-specific antidumping duty rate in this review. In the preliminary results, we found that Sidex had met the criteria for the application of separate antidumping duty rates. *See Preliminary Results*. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to this company. Therefore, we determine that Sidex should be assigned a rate separate from the NME entity for the NME portion of this administrative review period.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, to Joseph E. Spetrini, Acting Assistant Secretary for Import Administration, dated June 6, 2005, which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded in the Decision Memorandum is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the CRU.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes for the final results:

1. For dolomite, metallurgical coke, ferromanganese, scale and slag, iron scrap, caustic soda, ferromanganese, aluminum, silicocalcium, silicomanganese, lime, steel slab, injected coal powder, ammonium sulfate, raw tar, pitch A, pitch B and creosote oil, we are using different surrogate values for the final results. *See* Decision Memorandum at Comment 2 and Memorandum to Wendy J. Frankel from David Layton: Factors of Production Valuation for Final Results (June 6, 2005) (Final Valuation Memorandum) at 3–4, 6–8 and Exhibits C and D.
2. We are now using the financial statements of PT Jaya Pari Steel in place of those from Ispat Annaba SPA to calculate a non-depreciation overhead ratio for our primary surrogate company, Alexandria Iron and Steel Co. *See* Decision Memorandum at Comment 7 and Final Valuation Memorandum at 8 and Exhibits I–1 through I–3 for the revised calculation of the financial ratios.
3. The Department corrected ministerial errors in the preliminary results calculations, where appropriate. *See* Decision Memorandum at Comment 6. *See also* Memorandum to the File from David Layton and Paul Stolz: Final Results of the Administrative Review of Certain Hot–Rolled Carbon Steel Flat Products from Romania (A–485–806), Calculation Memorandum, Ispat Sidex S.A. (June 6, 2005) (Final Calculation Memorandum) at 2–3.

All–Others Rate

The Department is applying an all–others rate of 17.84 percent. We calculated this all–others rate in accordance with section 735(c)(5) of the Act using the weighted average of the estimated dumping margins established in the less–than–fair–value investigation for those exporters individually investigated. *See* Memorandum to the File from David Layton: Calculation of the All–Others Rate (June 6, 2005).

Final Results of Review

As a result of our review, we determine that the following weighted–average percentage margin exists for the period November 1, 2002, through October 31, 2003:

Manufacturer/exporter	Margin (percent)
S.C. Sidex S.A. (including Sidex Trading, S.A.)	0.00

Manufacturer/exporter	Margin (percent)
All Others Rate	17.84

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we will direct CBP to apply the *ad valorem* assessment rates against the entered value of each of the importer's (or customer's) entries during the review period. Where an importer (or customer)-specific *ad valorem* rate was *de minimis*, we will instruct CBP to liquidate without regard to antidumping duties.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash–Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) for Sidex, the margin was zero, therefore no cash deposit will be required; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash–deposit rate will continue to be the company–specific rate published in the prior segment of the proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding but the manufacturer is, the cash–deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer

participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 17.84 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix - Decision Memorandum

Comment 1: Appropriate Period for Surrogate Value Data

Comment 2: Aberrational Surrogate Value Data

Comment 3: Use of Market Economy Purchases From the Previous POR

Comment 4: Natural Gas Surrogate Value

Comment 5: Use of Romanian ME Barge Rates as NME Surrogates

Comment 6: Ministerial Errors

Comment 7: Financial Ratios

Comment 8: Treatment of Non–dumped Sales

[FR Doc. E5–3067 Filed 6–13–E5; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Notice of Jointly Owned Inventions Available for Licensing**

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of jointly owned inventions available for licensing.

SUMMARY: The inventions listed below are jointly owned by the U.S. Government, as represented by the Department of Commerce. The inventions are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: (301) 975-4188, fax (301) 869-2751, or e-mail: mary.clague@nist.gov. Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

[NIST DOCKET NUMBER: 02-004US]

Title: Bio-Affinity Porous Matrix in Microfluidic Channels.

Abstract: This invention is jointly owned by the U.S. Government, as represented by the Department of Commerce, and Loyola College. Acrylamide-modified DNA probes are immobilized in polycarbonate microfluidic channels via photopolymerization in a polyacrylamide matrix. The resulting polymeric, hydrogel plugs are porous under electrophoretic conditions and hybridize with fluorescently-tagged complementary DNA. The double stranded DNA can be chemically denatured and the chip may be reused with a new analytical sample. Conditions for photopolymerization, hybridization, and denaturation are discussed. The photopolymerization of plugs containing different DNA probe sequences in one microfluidic channel, thereby enabling the selective detection

of multiple DNA target in one electrophoretic pathway are demonstrated.

[NIST DOCKET NUMBER: 05-003US]

Title: Macro/Micro Crane.

Abstract: This invention is jointly owned by the U.S. Government, as represented by the Department of Commerce, and Oceaneering International, Inc. The invention describes a crane concept to facilitate the transfer of containerized cargo between two ships at sea. The invention uses a macro/micro design under which a serial set of independently controlled manipulators move a load between a base ship and a target ship. The manipulator is a modified container crane mounted on a ship subject to the actions of sea and wind. The modification compensates for the large motions of the base ship. The micro-manipulator moves the load and compensates for the motions of the receiving ship and the unscheduled motions of the base ship remaining after the macro-manipulator compensation.

Dated: June 7, 2005.

Hratch G. Semerjian,
Acting Director.

[FR Doc. 05-11730 Filed 6-13-05; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Announcing a Public Workshop on Cryptographic Hash**

AGENCY: National Institute of Standards and Technology (NIST).

ACTION: Notice of public workshop.

SUMMARY: A vulnerability was recently identified in the NIST-approved cryptographic hash algorithm, *Secure Hash Algorithm-1* (SHA-1). In response, NIST is announcing a public workshop to discuss this vulnerability, assess the status of other NIST-approved hash algorithms, and discuss possible near- and long-term options.

DATES: The workshop will be held on October 31 and November 1, 2005, from 9 a.m. to 5:30 p.m.

ADDRESSES: The workshop will be held in the Green Auditorium, Building 101 at the National Institute of Standards and Technology, Gaithersburg, MD. Comments, presentations, and papers, including reports on preliminary work, are encouraged prior to the workshop and should be sent to: hash-function@nist.gov. A detailed draft agenda and supporting documentation

for the workshop will be available prior to the workshop at: <http://www.nist.gov/hash-function>. The Web address for workshop registration is: <http://www.nist.gov/conferences/>.

FOR FURTHER INFORMATION CONTACT:

Additional information, when available, may be obtained from the Cryptographic Hash Workshop Web site or by contacting Sara Caswell, NIST, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899-8930. (301) 975-4634; Fax (301) 948-1233, or e-mail sara@nist.gov. Questions regarding workshop registration should be addressed to Teresa Vicente on (301) 975-3883 or teresa.vicente@nist.gov.

SUPPLEMENTARY INFORMATION: A cryptographic hash function takes a variable length input string and generates a fixed length output called the message digest. Because the message digest can serve as a digital fingerprint on the input, a cryptographic hash function is an important primitive in various security applications, such as authentication, key derivation, and digital signatures. One of the most commonly used hash functions is the NIST-approved SHA-1; however, a vulnerability has recently been uncovered that affects SHA-1. Specifically, a team of researchers reported that the SHA-1 function offered significantly less collision resistance than could be expected from a cryptographic hash function of its output size. Since all NIST-approved cryptographic hash functions share basic design attributes, a SHA-1 vulnerability warrants a reassessment of the entire family of the NIST-approved Secure Hash Algorithms. The Cryptographic Hash Workshop aims to solicit public input on how to respond to the current state of research in this area. Topics of specific interests include, but are not limited to, the following:

Security Status of Approved Hash Functions

- The latest results on the security of SHA-1;
- The latest results on the security of SHA-256 and SHA-512;
- Likely extensions to the latest results on the approved hash functions;
- The impacts of the latest results on different applications of the approved hash functions.

Short Term Actions

- How urgent are the current concerns with the approved hash functions?
- What changes to applications and protocols could mitigate potential problems?

- What guidance should NIST give with respect to hash functions and their applications?

Conditions for an Early Transition

- How can hash functions be assessed for security properties such as collision resistance, preimage resistance, and pseudo-randomness?
- What conditions would warrant a transition away from one of the approved hash functions earlier than currently planned?

Potential Replacement Options

- Hash functions currently available for replacing one of the approved hash functions;
- What paradigms, other than the Merkle-Damgård construction, might be appropriate to consider?
- The need for an open competition, along the lines of the AES competition, for designing a new hash function.

Requirements for Unkeyed Cryptographic Hash Functions

- Desirable (or undesirable) general properties of hash functions for security, performance, and implementability;
- Desirable (or undesirable) properties of hash functions for particular applications, such as digital signatures, key derivation, message authentication, and random number generation;
- Identifying and encouraging the proper use of hash functions for particular applications.

Submissions for the workshop are requested by July 15, 2005. NIST will provide the accepted papers and presentations in a workshop handout, and post them on the workshop Web site after the workshop. However, no formal workshop proceedings will be published. NIST encourages presentations and reports on preliminary work that participants plan to publish elsewhere.

Because of NIST security regulations, advance registration is mandatory; there will be no on-site, same-day registration. To register, please register via the Web at <http://www.nist.gov/conferences> or fax the registration form with your name, address, telephone, fax and e-mail address to (301) 948-2067 (Attn: Cryptographic Hash Workshop) by October 21, 2005. The registration fee will be \$125.00 (\$50.00 for students). Payment can be made by credit card, check, purchase order, or government training form. Registration questions should be addressed to Teresa Vicente on (301) 975-3883 or teresa.vicente@nist.gov.

Authority: This work is being initiated pursuant to NIST's responsibilities under the

Federal Information Security Management Act (FISMA) of 2002, Pub. L. 107-347.

Dated: June 7, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05-11729 Filed 6-13-05; 8:45 am]

BILLING CODE 3510-CN-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060805A]

Fisheries off West Coast States and in the Western Pacific; Bottomfish Fisheries; Overfishing Determination on Bottomfish Multi-Species Stock Complex; Hawaiian Archipelago

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

ACTION: Notice of overfishing determination.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that overfishing is occurring on the bottomfish multi-species stock complex (bottomfish complex) around the Hawaiian Archipelago and requests the Western Pacific Fishery Management Council (Council) to take appropriate action to end this overfishing. The Council is required to take action to end overfishing within 1 year following notification by NMFS that overfishing is occurring. The intent of this notice is to inform interested persons that Hawaii's bottomfish complex is undergoing overfishing.

SUPPLEMENTARY INFORMATION: On May 27, 2005, NMFS sent the following letter to the Council that (1) notifies the Council of the determination that overfishing is occurring in the bottomfish complex around Hawaii, (2) explains the Council's obligation to act in response to a determination that overfishing is occurring, and (3) requests the Council to take appropriate action to end overfishing.

Mr. Roy Morioka, Chairman

Western Pacific Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

Dear Roy,

By this letter, I advise the Western Pacific Fishery Management Council (Council) that NOAA's National Marine Fisheries Service (NMFS), on behalf of the Secretary of Commerce (Secretary), has determined that overfishing is occurring on the bottomfish

multispecies stock complex (Complex) around the Hawaiian Archipelago, and to request the Council to take action to end that overfishing.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary to report annually on the status of fisheries within each regional fishery management council's geographical area of authority and identify those fisheries that are overfished or approaching a condition of being overfished (16 U.S.C. 1854(e)(1)). According to the guidelines for National Standard 1 of the Magnuson-Stevens Act (50 CFR 600.310), fishery stock status is assessed with respect to two status determination criteria, one of which is used to determine whether a stock is "overfished" and the second of which is used to determine whether the stock is subject to "overfishing." A stock is considered to be overfished if its biomass falls below the minimum stock size threshold (MSST). A stock is subject to overfishing if the fishing mortality rate exceeds the maximum fishing mortality threshold (MFMT) for one year. The MSST and MFMT for particular stocks are specified in fishery management plans.

According to Amendment 6 Supplement to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP), effective July 3, 2003 (68 FR 46112, August 5, 2003), the MFMT for bottomfish stock complexes managed under the FMP would be exceeded if the fishing mortality rate exceeded the rate associated with maximum sustainable yield (MSY). The most recent assessment of the Complex presented in Appendix 5 of the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region 2003 Annual Report indicated that, based on data through 2002, fishing effort (proxy for fishing mortality) exceeded the rate associated with MSY.

Based on these assessment results, NMFS, relying on the expertise and advice of its Pacific Islands Fisheries Science Center, has determined that overfishing of the Complex is occurring around the Hawaiian Archipelago.

Appendix 5 points out that the main Hawaiian islands (MHI) is where the overfishing problem primarily occurs - >The MHI is the zone that contributes most of the problems in terms of both reduced biomass and overfishing.> Therefore, it is likely that reducing fishing mortality here would be the most effective means to end overfishing in the Hawaiian Archipelago.

We look forward to working together with the Council to develop a plan to end overfishing of bottomfish.

Sincerely,

William L. Robinson
Regional Administrator

Appendix 5 of the Council's 2003 Annual Report on the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region is available from <http://www.wpcouncil.org/bottomfish.htm> (See: Preliminary 2003 Annual Report, Status of Bottomfish Stocks).

Under section 304 (e) of the Magnuson-Stevens Act, the Council must take action within 1 year following notification by NMFS that overfishing is occurring. Hence, the Council is required to prepare and submit to the Secretary, by May 27, 2006, a fishery management plan amendment and proposed regulations to end overfishing in the bottomfish complex around the Hawaiian Archipelago.

Dated: June 8, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 05-11735 Filed 6-13-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052705A]

Marine Mammals; File No. 984-1587

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Department of Biology, University of California at Santa Cruz, Long Marine Laboratory, Santa Cruz, CA 95064 has been issued an amendment to scientific research Permit No. 984-1587-03.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562) 980-4001; fax (562) 980-4018.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301) 713-2289.

SUPPLEMENTARY INFORMATION: On December 28, 2004 and February 10, 2005, notices were published in the *Federal Register* (69 FR 77732 and 70 FR 7082, respectively) that an amendment of Permit No. 984-1587-03 had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the

Taking and Importing of Marine Mammals (50 CFR part 216).

The permit amendment authorizes holding and research activities on two bottlenose dolphins (*Tursiops truncatus*) and two California sea lions (*Zalophus californianus*) currently maintained by Long Marine Laboratory. In addition, authorization has been granted for research activities on 30 male and 30 female juvenile California sea lions undergoing rehabilitation at The Marine Mammal Center; a non-profit hospital, rescue, and research facility. This permit has further been extended for three years.

Dated: June 8, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05-11736 Filed 6-13-05; 8:45 am]

BILLING CODE 3510-22-S

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 July 14, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader,

Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: June 8, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Child Care Provider Loan Forgiveness Application and Child Care Provider Loan Forgiveness Forbearance Form.

Frequency: Annually.

Affected Public: Individuals or household; businesses or other for-profit; not-for-profit institutions; Federal Government; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses—400. Burden Hours—90.

Abstract: The Child Care Provider Loan Forgiveness Application is used to determine whether borrowers who previously received loan forgiveness continue to meet the eligibility requirements for Child Care Provider Loan Forgiveness Program. Under this program, individuals who work full-time in certain child care facilities that serve low-income families and meet other qualifications may be eligible to have up to 100% of their Direct Loan and/or FFEL program loan forgiven. The Child Care Provider Loan Forgiveness Forbearance Form is required to fulfill program guidance that provides forbearance for child care providers and to determine the child care providers eligibility for forbearance.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2732. 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) 245-6623. 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. 05-11738 Filed 6-13-05; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION

Office of Postsecondary Education, Overview Information, Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.170A.

Dates:

Applications Available: July 11, 2005.

Deadline for Transmittal of

Applications: October 3, 2005.

Deadline for Transmittal of the Free Application for Federal Student Aid (FAFSA): January 31, 2006.

Eligible Applicants: Individuals who at the time of application: (1) Have not completed their first full year of study for a doctoral degree or a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study, or will be entering a doctoral degree program or a master's degree program in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study in academic year 2006-2007; (2) are eligible to receive grant, loan, or work assistance pursuant to section 484 of the Higher Education Act of 1965, 20 U.S.C. 1091, as amended (HEA); and (3) intend to pursue a doctoral or master's degree in fields selected by the Jacob K. Javits (JKJ) Fellowship Board at accredited U.S. institutions of higher education. An individual must be a citizen or national of the United States, a permanent resident of the United States, in the United States for other than a temporary purpose and intending to become a permanent resident, or a citizen of any one of the Freely Associated States.

Estimated Available Funds: \$2,021,088.

Estimated Average Size of Awards: \$42,106.

Estimated Number of Awards: 48.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the JKJ Fellowship Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise, to undertake graduate study in selected fields in the arts, humanities, and social sciences leading to a doctoral degree or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. The selected fields in the arts are: creative writing, music performance, music theory, music composition, music literature, studio arts (including photography), television, film, cinematography, theater arts, playwriting, screenwriting, acting, and dance. The selected fields in the humanities are: art history (including architectural history), archeology, area studies, classics, comparative literature, English language and literature, folklore, folk life, foreign languages and literature, history, linguistics, philosophy, religion (excluding study of religious vocation), speech, rhetoric, and debate. The selected fields in the social sciences are: anthropology, communications and media, economics, ethnic and cultural studies, geography, political science, psychology (excluding clinical psychology), public policy and public administration, and sociology (excluding the master's and doctoral degrees in social work).

Program Authority: 20 U.S.C. 1134-1134d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 84, 85, 86, 97, 98 and 99; and (b) The regulations for this program in 34 CFR part 650.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: \$2,021,088.

Estimated Average Size of Awards: \$42,106.

Estimated Number of Awards: 48.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. Eligible Applicants: Individuals who at the time of application: (1) Have not completed their first full year of study for a doctoral degree or a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study, or will be entering a doctoral degree program or a master's degree program in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study in academic year 2006-2007; (2) are eligible to receive grant, loan, or work assistance pursuant to section 484 of the HEA; and (3) intend to pursue a doctoral or master's degree in fields selected by the JKJ Fellowship Board at accredited U.S. institutions of higher education. An individual must be a citizen or national of the United States, a permanent resident of the United States, in the United States for other than a temporary purpose and intending to become a permanent resident, or a citizen of any one of the Freely Associated States.

2. Cost Sharing or Matching: This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. Web Address to Access Application Package:

Applications can only be accessed electronically on the JKJ Fellowship Program Web site: <http://www.ed.gov/programs/jacobjavits/index.html>.

An applicant who is unable to obtain an electronic copy of the application package may submit a written request to obtain a hardcopy. In the request, the applicant should explain the reason or reasons that prevent the applicant from using the Internet to obtain a copy of the 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: Carmen Gordon, U.S. Department of Education, 1990 K Street, NW., suite 6018, Washington, DC 20006-8524. Fax: (202) 502-7859.

Individuals with disabilities may obtain the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under For Further

Information Contact in section VII of this notice.

Note: The FAFSA may be obtained from the institution of higher education's financial aid office or accessed at: <http://www.fafsa.ed.gov>.

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.

3. *Submission Dates and Times:*

Applications Available: July 11, 2005.

Deadline for Transmittal of

Applications: October 3, 2005.

Deadline for Transmittal of the

FAFSA: January 31, 2006.

Applications for grants under this program must be submitted by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.* If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.170A), 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 84.170A), 7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of the 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.

b. *Submission of Applications by Hand Delivery.* If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.170A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program have been established by the JKV Program Fellowship Board, pursuant to section 702(a)(2) of the HEA and 34 CFR 650.20(a). The selection criteria for applications in the humanities and social sciences are—(a) Statement of purpose (150 points); (b) Letters of recommendation (100 points); (c)

Academic record (100 points); and (d) Scholarly awards/honors (50 points). The selection criteria for applications in the arts are—(a) Statement of purpose (100 points); (b) Letters of recommendation (100 points); (c) Academic record (50 points); (d) Scholarly awards/honors (50 points); and (e) Supporting arts materials (100 points).

2. *Review and Selection Process:* The review and selection process for the JKV Fellowship Program consists of a two-part process. Eligible applications are read and rated by a distinguished panel of scholars and academics in the arts, humanities, and social sciences on the basis of demonstrated scholarly achievements and exceptional promise. The second part of the evaluation is a determination of financial need.

VI. Award Administration Information

1. *Award Notices:* Successful applicants will be notified by telephone and a Grant Award Notification (GAN) will be sent directly to the institution the applicant will be attending. Unsuccessful applicants will be notified.

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.

3. *Reporting:* On an annual basis, fellows are required to submit their Student Aid Report to the Javits Program Coordinator at their institution as specified by the Secretary in 34 CFR 650.37. In addition, Javits fellows are required to submit an annual performance report.

4. *Performance Measures:* The effectiveness of the JKV Fellowship Program will be measured by graduate completion rates, time to degree completion rates, and the costs per Ph.D. of talented graduate students, with demonstrated financial need, who are pursuing the highest degree available in their designated fields of study. Institutions of higher education in which the fellows are enrolled are required to submit an annual report documenting the fellows' satisfactory academic progress and the determined financial need. Javits fellows are also required to submit an annual performance report to assist program staff in tracking time-to-degree completion rates, graduation rates, as

well as the employment status of individual fellows. The Department will use the reports to assess the program's success in assisting fellows in completing their course of study and receiving their degree.

VII. Agency Contacts

For Further Information Contact:

Carmen Gordon, Jacob K. Javits Fellowship Program, U.S. Department of Education, Teacher and Student Development Service, 1990 K St., NW., suite 6000, Washington, DC 20006-8524. Telephone: (202) 502-7542 or via Internet: ope_javits_program@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 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: June 9, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05-11744 Filed 6-13-05; 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.

DATES AND TIME: Thursday, June 30, 2005, 9:30 a.m.-10:30 a.m.

PLACE: New York Marriott Marquis, 1535 Broadway, 16th Floor Sky Lobby, New York, NY 10036, (212) 398-1900, (Subway Stop: MTA 42nd Street).

AGENDA: The Commission will receive reports on the following: Title II Requirements Payments; Proposed Voluntary Voting System Guidelines; Statewide Voter Registration List Guidance and updates on other administrative matters.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566-3100.

Carol A. Paquette,

Interim Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05-11844 Filed 6-10-05; 2:57 pm]

BILLING CODE 6820-KF-M

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of its "Technology Partnership Ombudsmen Reporting Requirements", OMB Control Number 1910-5118. This information collection package covers information necessary to implement a statutory requirement that the Technology Transfer Ombudsmen report quarterly on complaints they receive.

DATES: Comments regarding this collection must be received on or before July 14, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395-7345.

ADDRESSES: Written comments should be sent to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to: Sharon Evelin, Director, Records

Management, Division IM-11/ Germantown Bldg., U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585-1290.

Or by fax at (301) 903-9061 or by e-mail at sharon.evelin@hq.doe.gov.

And to Ann Broker, GC-12, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585-1290 ann.broker@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: The individuals listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No.*: 1910-5118; (2) *Package Title*: Technology Partnerships Ombudsmen Reporting Requirements; (3) *Type of Review*: Renewal; (4) *Purpose*: The information collected is used to determine whether the Technology Transfer Ombudsmen appointed by DOE national laboratories in accordance with the Technology Commercialization Act of 2000 (Pub. L. 106-404) are properly working to resolve complaints from outside organizations regarding laboratory policies and actions with respect to technology partnerships; (5) *Estimated Number of Respondents*: 24; (6) *Estimated Total Burden Hours*: 100; *Statutory Authority*: Pub. L. 106-404, Technology Transfer Commercialization Act of 2000.

Issued in Washington, DC on June 3, 2005.

Sharon Evelin,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 05-11724 Filed 6-13-05; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, July 7, 2005, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L-107, Front Range Community College, 3705 W., 112th Avenue, Westminster, Colorado.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Executive Director, Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO 80021;

telephone (303) 966-7855; fax (303) 966-7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation and Discussion on the Rocky Flats Transition Interim Surveillance and Maintenance Plan.

2. Presentation and Discussion on the Results of Air and Water Monitoring During Building Demolition.

3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO 80021; telephone (303) 966-7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: <http://www.rfcab.org/Minutes.HTML>.

Issued at Washington, DC on June 9, 2005.

R. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05-11726 Filed 6-13-05; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy (DOE).

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on June 21,

2005, at the headquarters of the IEA in Paris, France, in connection with a meeting of the IEA's Standing Group on Emergency Questions.

FOR FURTHER INFORMATION CONTACT:

Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on June 21, 2005, beginning at 11:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on June 21, beginning at 2:30 p.m. and continuing at 9:30 a.m. on June 22, including a preparatory encounter among company representatives from 11:30 a.m. to 12:15 p.m. on June 21. The agenda for the preparatory encounter is as follows:

- I. Welcome, Review of Agenda, and Introductions
- II. Input on SEQ Work Plans
 - Workshops to Expand SEQ Member Knowledge on Oil Markets
 - Emergency Response Exercise 4
 - IEA/EC Convergence of Reporting
 - Non-Member Country Cooperation
- III. Closing and Review of Meetings of Interest to IAB Members
 - Workshop on Oil Stockpiling in the APEC Region, July 26-27, 2005, Honolulu
 - SEQ and IAB Meeting, November 17-18, 2005, Paris
 - SEQ and IAB Meeting, March 22-23, 2006, Paris
 - SEQ and IAB Meeting, June 21-22, 2006, Paris
 - SEQ and IAB Meeting, November 15-16, 2006, Paris

The agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 113th Meeting
3. Emergency Response Review Program (part 1)
 - Emergency Response Review of the Netherlands

4. The Current Oil Market Situation
 - Report on the Current Oil Market
5. Report on the Current Activities of the IAB
 - Report on Current Activities
 - Presentation: How the Oil Market Functions
6. Presentation: What Constitutes an Oil Supply Crisis? What Are the Ramifications of Action vs. Inaction?
7. SEQ Program of Work
 - Overview of Future Work in 2005
 - Results of IEA Priority-Setting Exercise
 - Evaluation of Program of Work
 - Report on June Governing Board Meeting Discussion on Program of Work
8. Update on Compliance with IEP Stockholding Commitments
 - Update on Compliance with IEP Stockholding Commitments
 - Reports by Non-Complying Member Countries
9. Report on Recent Governing Board Meetings
10. Emergency Response Review Program (part 2)
 - Emergency Response Review of New Zealand
 - Emergency Response Review of Italy
11. Other Emergency Response Activities
 - Proposed Work on Gas Supply Emergency Policies
12. Activities with Non-Member Countries and International Organizations
 - Offer of a Voluntary Contribution by the United Kingdom
 - Asian Overseas Oil Investment: Can the National Oil Companies Deliver?
 - Report on 3rd IEA/OPEC Workshop, May 15, 2005, Kuwait
 - Workshop on Oil Stockpiling in the APEC Region, July 26-27, 2005, Honolulu
13. Emergency Response Review Program (part 3)
 - Emergency Response Review of Greece
 - Questionnaire Response of Denmark
 - Questionnaire Response of Sweden
 - Schedule of Emergency Response Reviews
14. Policy and Other Developments in Member Countries
15. Other Documents for Information
 - Emergency Reserve Situation of IEA Member Countries
 - Emergency Reserve Situation of IEA Candidate Countries
 - Monthly Oil Statistics: March 2005
 - Base Period Final Consumption: 2Q 2004-1Q 2005

- Quarterly Oil Forecast: 2Q 2005
- Update of Emergency Contacts List
- 16. Other Business
- Dates of Next Meetings (tentative):
November 17–18, 2005; March 21–23, 2006; June 20–21, 2006;
November 14–16, 2006.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions (SEQ); representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, June 8, 2005.

Samuel M. Bradley,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 05–11725 Filed 6–13–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: August 2, 2005 from 10 a.m. to 5 p.m., August 3, 2005 from 9 a.m. to 5 p.m., and August 4, 2005 from 9 a.m. to 1 p.m.

ADDRESSES: U.S. Department of Energy's Central Regional Office, 1617 Cole Blvd., MS 1521, Golden, CO 80401.

FOR FURTHER INFORMATION CONTACT: Gary Burch, Office of Technology Development, Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy, Washington, DC 20585, Telephone (202) 586–0081.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's

responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- EERE Programmatic Update.
- 2005 Annual Report.
- Strategic Plan.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 9, 2005.

R. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–11727 Filed 6–13–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order Accepting Filing, Requiring Compliance Filing Accepting and Suspending Proposed Tariff Sheets, and Establishing Hearing Procedures

Issued May 31, 2005.

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

Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, all d/b/a Allegheny Power; PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.

[Docket No. ER04–156–006]

PJM Interconnection, L.L.C.

[Docket No. ER05–513–000]

Baltimore Gas and Electric Company; and Pepco Holdings Inc. Operating Affiliates: Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company

[Docket No. ER05–515–000]

PJM Interconnection, LLC

[Docket No. EL05–121–000]

1. In this order, the Commission acts on three filings related to PJM Interconnection, LLC's (PJM) Regional Transmission Expansion Plan (RTEP) process. With respect to the filing in Docket No. ER04–156–006, which proposes to continue PJM's current modified zonal rate design, we are establishing a hearing under section 206 of the Federal Power Act (FPA)¹ to examine the justness and reasonableness of continuing PJM's modified zonal rate design. We accept the tariff sheets filed by certain PJM transmission owners (the PJM TOs) in Docket No. ER05–513–000, subject to further compliance filing, to establish the general methodology for recovery of costs incurred under the RTEP process. And we accept and suspend, to become effective June 1, 2005, subject to refund and to the outcome of a hearing, the filing by another group of TOs in Docket No. ER05–515–000 to establish a formula rate for recovery of transmission costs, including RTEP costs. This order benefits customers by providing the needed infrastructure to support robust competitive markets and allows PJM's TOs timely recovery of just and reasonable rates for new transmission infrastructure.

¹ 16 U.S.C. 824e (2000).

Background

2. PJM provides Point-to-Point service, Network Integration Transmission service, and a variety of ancillary services over its transmission system. PJM's existing modified zonal or "license plate" rate design is based on zonal transmission rates for the geographic zone delineated by each TO's transmission facilities and the customer loads within each transmission zone,² and rates for Network Integration and Point-to-Point customers are both based on the embedded costs of a TO's transmission facilities. The rates for each TO's transmission zone generally remain in effect until it is amended by the TO or modified by the Commission.

3. PJM also conducts its RTEP process, under which it identifies and designates upgrades to the systems of its TOs that are required to be constructed to maintain reliability and enhance competition. Previously, the PJM transmission owners had filed a new Schedule 12A to PJM's tariff to recover the costs of transmission enhancements designated by PJM pursuant to its RTEP. By order issued January 2, 2004 in Docket No. ER04-156-000,³ the Commission accepted and suspended the proposed Schedule 12A subject to refund, initiated a hearing and instituted an investigation pursuant to section 206 of the FPA. Ultimately, the Commission accepted a settlement agreement in that docket which required that: (1) The PJM parties address by January 31, 2005, whether the existing zonal rate design within PJM should be changed after May 31, 2005, and if so, what new rate design should be

considered, and (2) the settling parties make a future filing addressing the harmonization of existing transmission rates with new transmission investment recovery proposals.⁴

4. This order address three filings related to the recovery of the costs of upgrades designated through PJM's RTEP process. First, in Docket No. ER04-156-006, the PJM Settling Parties⁵ propose to fulfill the first settlement requirement by proposing to continue a zonal rate design for the PJM footprint. Second, in Docket No. ER05-513-000, the PJM parties propose to fulfill the second settlement requirement settlement by submitting revisions to Schedule 12 of the PJM Open Access Transmission Tariff (OATT) to establish the procedures by which the PJM TOs may, if they choose, recover the costs incurred in constructing new transmission facilities. Third, in Docket No. ER05-515-000, Baltimore Gas and Electric Company, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company, (jointly, PHI TOs) submit tariff sheets to implement a transmission cost of service formula rate for determining the PHI TOs' wholesale revenue requirements.

A. Docket No. ER04-156-006

5. The PJM Settling Parties state that, pursuant to their obligation under the May 26 Settlement, they propose that PJM's existing rate design not be changed at this time. The PJM Settling Parties state that currently, PJM's rate design is subject to the outcome of several ongoing proceedings:

- In Docket No. EL02-111-000, *et al.*, the Commission is considering the long-term pricing structure (LTPS) for transmission between PJM and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).⁶

⁴ This settlement (May 26 Settlement) was accepted by Commission order issued on August 9, 2004, in *Allegheny Power Sys. Operating Companies, et al.*, 108 FERC ¶ 61,167 (2004) (August 9 Order).

⁵ For the purposes of this proceeding, the PJM Settling Parties shall be the following: Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, all d/b/a Allegheny Power; the following PHI Operating Companies: Potomac Electric Power Company; Delmarva Power & Light Company; Atlantic City Electric Company; and Baltimore Gas and Electric Company, Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc. and PJM Interconnection, L.L.C.

⁶ The long term pricing structure (LTPS) proceeding addresses the existing regional through and out rates (RTOR) between the Midwest ISO and

- In its November 18 Order, the Commission eliminated regional through and out rates between PJM and Midwest ISO, continued the existing PJM and Midwest ISO rates, and imposed transitional Seams Elimination Charge/Cost Adjustments/Assignments (SECA) charges through March 31, 2006, but further stated in that order that it was not altering "the obligation of PJM Parties to file on or before January 31, 2005, a reevaluation of the rate design for intra-RTO [Regional Transmission Organization] service and a proposed rate design to take effect on June 1, 2005."⁷

- The Commission has directed the PJM and Midwest RTOs and their transmission owners to make a filing at least six months before February 1, 2008, to reevaluate the fixed cost recovery policies for pricing transmission service between the two RTOs and propose a rate design to take effect February 1, 2008.⁸

6. Because of these proceedings, the PJM Settling Parties propose that the existing modified zonal rate design should be retained until the rate design within PJM can be considered as part of a wider regional evaluation. The PJM TOs argue that retaining the existing rate design will enhance rate stability, reduce uncertainty, and avoid unintended consequences, particularly at a time when the following region-wide changes are underway:

- The elimination of through and out rates between PJM and Midwest ISO, subject to the LTPS proceeding, and implementation of the SECA charge;
- The development of a joint and common market with Midwest ISO; and
- The cost allocation to customers of new transmission facilities that are built in one RTO but provide some benefits to customers in another RTO.

7. They explain that retaining the existing rate design will permit the impacts of the changes already underway to be better understood and accommodated. For example, they note that PJM's OATT Schedule No. 12 is already transitioning away from a pure license plate rate design because it provides for separate cost assignments of new facilities to the customers or

PJM. In its November 18 Order at PP 61 and 62, the Commission eliminated rates for new RTOR service effective December 1, 2004, and approved use of license plate rates for pricing RTOR service between Midwest ISO and PJM through January 31, 2008. Since the eliminated RTOR rates resulted in lost revenues to transmission owners, this action was accompanied by a Seams Elimination Charge/Cost Adjustment/Assignment (SECA) charge. See *Midwest Independent Transmission System Operator, Inc., et al.*, 105 FERC ¶ 61,212 (2003).

⁷ November 18 Order at P 42.

⁸ *Id.* at P 62.

² See *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168 at P 10 n.14 (November 18 Order) ("Under a license plate rate design, the RTO's footprint is segregated into a number of transmission pricing zones, typically based on the boundaries of individual transmission owners or groups of transmission owners, and customers taking transmission service for delivery to load within the RTO pay a rate based on the embedded cost of the transmission facilities in the transmission pricing zone where the load is located. Thus, under license plate rates, customers serving load within the RTO pay for the embedded cost of the transmission facilities in the local transmission pricing zone and receive reciprocal access to the entire regional grid").

Additionally, PJM notes that, while currently the costs of existing facilities in each transmission owner's geographic zone are recovered from the load in that zone, in the future, facilities constructed under the PJM Regional Transmission Expansion Plan process may be located in one zone, but the costs of those facilities may be allocated to load in other zones. Thus, PJM asserts, its rate design is no longer a "pure" license plate rate design, but more accurately described as a modified zonal rate design. PJM January 31, 2005 filing in Docket No. ER04-156-006 at 2.

³ *Allegheny Power System Operating Companies, et al.*, 106 FERC ¶ 61,003 (2004) (January 2 Order).

zones that will benefit from these facilities. Further, over time, this “modified zonal rate design” will evolve as some level of new facilities costs is allocated away from the zone of the transmission owner that builds the facilities and to the zone of the benefiting customers. The PJM Settling Parties also claim that retaining the existing rate design will give them the ability to coordinate consideration of any alternative rate design with the Midwest ISO transmission owners, and that a consistent and common rate design will facilitate the Commission’s goal of creating a PJM-Midwest ISO joint and common market.⁹

8. The PJM Settling Parties also advise that there is no alternative to the modified zonal rate design that is agreeable to all or even a majority of the PJM Parties at this time, and that continuation of the existing rate design is not opposed by most PJM stakeholders based on the stakeholder process required by the settlement reached in Docket No. ER04–156–000.¹⁰ For the reasons discussed above, the PJM Settling Parties believe that it would be premature to change the intra-PJM modified zonal rate design at this time, and request that PJM be permitted to develop a new rate design, or explain why the modified rate design remains sound, in tandem with the similar evaluation of the Midwest ISO rate design to be in place by February 1, 2008.

B. Docket No. ER05–513–000

9. The PJM TOs¹¹ submitted revisions to Schedule 12 of the PJM OATT to establish the procedures by which the PJM TOs may recover the costs incurred in constructing new transmission facilities. The PJM TOs propose three options that each PJM TO may select to recover the costs incurred in construction of new transmission facilities. A PJM TO may elect:

- Not to seek to recover the costs of new transmission facility construction from customers until such time that it proposes to revise its zonal transmission rates generally [Option 1];
- To file to establish a revenue requirement to recover the cost of constructing a specific new transmission facility pursuant to section

205 of the FPA and the Commission’s rules and regulations, without revising its zonal transmission rates generally [Option 2]; or

- To establish the revenue requirement for new transmission facilities it constructs through the operation of a formula rate that is also applicable to its zonal revenue requirement, so that both the revenue requirement associated with RTEP projects and the revenue requirement for the TO’s existing facilities will be determined through the formula [Option 3]. Under Option 3, the formula rate for the RTEP project will be collected separately from the rate for the TO’s existing facilities.¹²

10. The PJM TOs request that the Commission grant waiver to permit them to file one day prior to the Commission’s 120-day maximum notice period.¹³ In support of waiver of the notice period, the PJM Parties note that the Settlement provided that the instant filing would be made by January 31, 2005, to become effective on June 1, 2005.

C. Docket No. ER05–515–000

11. Baltimore Gas and Electric (BGE) and the public utility operating affiliates of Pepco Holdings, Inc. (PHI): Potomac Electric Power Company (Pepco), Delmarva Power & Light Company (Delmarva), and Atlantic City Electric (ACE) (jointly referred to as PHI TOs) filed proposed tariff sheets reflecting a new formula rate for determining the TOs’ annual wholesale revenue requirement as set forth in Attachment H to PJM’s OATT.¹⁴ The PHI TOs explain that the formula rate is only for them and it is not intended to affect the rates in Attachment H for any other TO’s transmission zone.¹⁵

12. The formula rate will calculate the rate for Network Integration Transmission Service (NITS) at 69 kV and higher voltage facilities. The PHI TOs propose to reflect in their rates: (i)

their most recent historical FERC Form 1 costs and (ii) new transmission additions that have gone into service or cost projections of new transmission additions that are expected to go into service in the current year.¹⁶ The formula is proposed to apply to rate periods commencing each year on June 1 and continuing through May 31 of the succeeding year. Thus, on or before April 30, 2005, the PHI TOs will populate the formula inputs to include actual 2004 FERC Form 1 data, plus new transmission additions that are expected to go into service in 2005, and the results will be posted on PJM’s Web site. The PHI TOs explain that this timing will enable them to use actual Form 1 data from the preceding calendar year, and to calculate true-ups for all costs, including the one component of the formula that will consist of projections—*i.e.*, transmission additions that are planned to go into service during the year of each rate update. They explain further that the projects that they anticipate constructing will be either (a) projects required by the PJM RTEP, or (b) if not in the RTEP, explained in the formula’s supporting statements. Moreover, the formula will be true-up annually to include actual plant additions for the relevant period, with interest as specified in section 35.19(a) of the Commission’s regulations. Accordingly, the PHI TOs propose that the NITS rates posted on April 30, 2005 will become effective on June 1, 2005. To the extent that the June 1 effective date requires waiver of the Commission’s notice requirements under section 35.3,¹⁷ the PHI TOs respectfully request such waiver.

13. The PHI TOs note that they have twice attempted to deal with the question of rate recovery for new transmission investments in filings that were intended to implement PJM’s RTEP process. First in Docket No. ER03–738–000, and thereafter in Docket No. ER04–156–000, the PHI TOs proposed that a single return on common equity be made applicable to all of the PJM TOs at this time.¹⁸ The PHI TOs advise that their proposed base return on equity (ROE) of 12.4 percent (before incentives) is supported by a Commission-approved discounted cash flow (DCF) model applied to their proxy group of Northeast transmission owning utilities and will be used in the individual capital structures of the PHI TOs. In addition, they note that the Commission has already held in two

⁹ Citing *PJM Interconnection, L.L.C., et al.*, 109 FERC ¶ 61,094 at P16 (2004).

¹⁰ Section 3(C) of the May 26 Settlement.

¹¹ In addition to those PJM TOs above, this filing would govern future rate filings by all of the PJM TOs that are listed in Attachment L to PJM’s Tariff, including American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company, Virginia Power and Light Company, and Duquesne Light Company.

¹² See PJM’s Tariff, proposed Schedule 12—Appendix A. Specifically, Transmission Enhancement Charges for RTEP projects can be the product of a section 205 filing under Option Two, or the application of the formula rate to the costs of the required Transmission Enhancement pursuant to Option 3.

¹³ 18 CFR 35.3(a).

¹⁴ The proposed formula is comprised of PJM Tariff sheets that are designated as PJM Tariff, Attachments Nos. H–1 for ACE, H–2 for BGE, H–3 for Delmarva, and H–9 for Pepco.

¹⁵ The PHI TOs note that “the formula rate proposed here will provide a timely and effective means to “harmonize” the costs of new facilities with a company’s embedded transmission revenue requirements.” PHI TOs’ filing, transmittal letter at 3. We therefore assume that, effectively, the PHI TOs are electing Option 3, of the three options set forth in the PJM TOs’ filing in Docket No. ER05–513.

¹⁷ 18 CFR 35.3 (2004).

¹⁸ *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,124 at P 72 (2003) (RTEP Order).

¹⁹ *Id.* at P 74.

separate dockets that the 50 basis point adder is warranted for all PJM TOs because the TOs have already given up operational control of their transmission facilities to PJM.¹⁹

14. The PHI TOs are also proposing to apply a 100 basis point adder for new transmission investment that is placed in service in accordance with the RTEP process. The PHI TOs state that according to the testimony of their witness Dr. Avera, the proposed base ROE, the 100 basis point adder, and the 50 point RTO membership adder all fall within the zone of reasonableness as determined by an accepted Discounted Cash Flow (DCF) analysis.

15. The PHI TOs advise that they are including abbreviated Statements AA through BL in support of this filing and they request waivers of section 35.13 of the regulations,²⁰ including waiving the full Period I and Period II data, and 35.13(a)(2)(iv) to determine if and the extent to which a proposed change constitutes a rate increase based on Period I–Period II rates and billing determinants. In support of waiver, they note that the revenue requirements resulting from the formula will be derived using the billing determinants published annually by PJM.

Notice of Filings and Responsive Pleadings

16. Notice of the filings in Docket Nos. ER04–156–006, ER05–513–000, and ER05–515–000 was published in the **Federal Register**,²¹ with comments, protests, or interventions due on or before February 22, 2005. Motions to intervene or motions for late intervention were filed by the entities listed in Attachment A to this order.²² In Docket No. ER04–156–006, the PJM Settling Parties and COST filed answers. In Docket No. ER05–513–000, answers were filed by COST and the PJM TOs. In Docket No. ER05–515–000, answers were filed by COST, ODEC and the Easton Utilities Commission, and the PHI TOs filed two answers.

A. Docket No. ER04–156–006

1. Endorsements and Protest of Modified Zonal Rate Design

17. PJM ICC and Joint Consumer Advocates generally support the PJM Parties' proposal to retain existing modified zonal rates, because this approach avoids potentially significant cost shifting and issues with levelization of transmission rates that

would arise should PJM's current rate design be accepted.²³ Joint Consumer Advocates state that considering the significant costs shifts that already attendant to the SECA rate design, that the Commission accepted in *Midwest Independent Transmission Operator, Inc., et al.*,²⁴ maintaining existing license plate rates provides stability during this transition period resulting from the elimination of regional through and out rates. Joint Consumer Advocates point out that this stability is an essential element of the rate structure approved by the Commission in Docket Nos. EL02–111–000 *et al.*

18. ODEC protests the proposal to permit separate rates of the PHI Operating Companies within PJM's modified zonal rate design. ODEC states that it does not protest the modified zonal rate, but rather the proposal to continue separate rates for each of the PHI Operating Companies in Docket No. ER05–515–000 and states that the filing in ER04–156–006 will continue the separate modified zonal rates for these three PHI Operating Companies. ODEC states that PHI Operating Companies have failed to justify their continued departure from a single rate. ODEC requests that the Commission reject this aspect of the proposal, or, in the alternative, include the issue in the proceedings in Docket No. ER05–515–000.

19. AEP protests the existing modified zonal rate design because it believes that waiting until February 2008 for the PJM and Midwest RTOs' LTPS process to implement a regional rate design is too long. AEP notes that Schedule 6 of the PJM Operating Agreement and Schedule 12 of the PJM Tariff will directly assign costs across zones and will arguably regionalize the cost of new facilities in PJM. However, AEP notes that the costs of the Extra High Voltage (EHV) facilities (500 kV and above) are spread among the preexisting PJM members, but complains that the status quo proposal would not extend that same treatment to the substantial EHV transmission owned by AEP and other new entrants. AEP advises that the majority of costs will stay within a single zone based on the expansions

planned for 2005, 2006 and 2007.²⁵ AEP's also advises that prior to the elimination of out and through rates as of December 1, 2004 in the LTPS proceeding, AEP was able to collect up to 40 percent of its costs associated with its transmission facilities from external transactions.²⁶ AEP complains that apart from a short SECA surcharge lasting only through March 2006, no regionalization of costs has been forthcoming from that proceeding. AEP also complains that a substantial gap exists between SECA expiration in March 2006 and any chance for regionalization of rate design in 2008.²⁷ Accordingly, and because things have significantly changed since the May 26, 2004 Settlement, AEP requests that the Commission suspend and investigate the status quo proposal, and set the matter for hearing.

B. Docket No. ER05–513–000

1. Harmonization

20. COST, Joint Consumers Advocates, DE PSC, Municipalities and PPANJ contend that the PJM Parties have not complied with the Commission's directives to harmonize the rate treatment of new and existing facilities. COST states that it understands harmonization to mean that there will be no over-recovery of costs when the existing rates and any proposed new rates are in effect simultaneously, *i.e.*, that the existing and new rates together produce overall charges that are just and reasonable.

21. Joint Consumer Advocates protest the TOs' attempt to bring an overbroad category of new transmission investment within Schedule 12, stating that new transmission investment that has not been subject to the regional planning process or approved by PJM should be excluded from recovery under Schedule 12. DE PSC points out that the proposed three-option Schedule 12 would allow a TO to recover incremental transmission costs, file piecemeal surcharge requests, or file formula rates without making a single filing to the Commission, and that while it would support a formula rate for PHI,

²⁵ According to AEP, the Commission has presently approved \$1.66 billion of revenue requirements for PJM and, with Total RTEP Baseline Reinforcements of \$574 million, AEP estimates that the revenue requirement associated with these additions is \$20 million or less than 2 percent of total revenue requirements (see attachment to AEP protest).

²⁶ According to AEP's filing in Docket No. ER05–751–000, AEP projects SECA revenue of \$163.8 million for 2005.

²⁷ According to AEP, the Commission has consistently indicated that license plate pricing should be regarded as a temporary expedient pending the development of a regional rate design.

¹⁹ *Id.* at P 74.

²⁰ 18 CFR 35.13 (2004).

²¹ 70 FR 797–798 (2005).

²² The comments and protests filed by certain of those parties will be discussed below.

²³ “A levelized rate is designed to recover all capital costs through a uniform, nonvarying payment over the life of the asset, just as a traditional home mortgage payment does.” *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,193 (1999), order on reh'g, Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092 (2000), appeal dismissed *sub. nom. Public Utility District No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

²⁴ 109 FERC ¶ 61,168 (2004).

which serves many Delaware customers, that is just and reasonable, DE PSC is mindful of the fact that PHI may switch to these other options under Schedule 12.

22. With respect to Option 1, COST contends that the Commission's January 16, 2004 order on rehearing in Docket No. ER04-156-002²⁸ was premised on the understanding that the Applicant TOs would be revisiting their existing rates in conjunction with the January 31, 2005 filings and that Option 1 fails to consider whether the TO's existing rates are just and reasonable. COST maintains that when an Applicant TO is willing to forgo revenues associated with new facilities, that establishes a *prima facie* presumption that the TO is over-earning under its current rates.

23. COST, Joint Consumer Advocates and DE PSC contend that Option 2 does not accomplish the goal of harmonization, because it fails to consider both the rates in Schedule 12 and the TOs' old base rates, and therefore violates the Commission's longstanding policy against *ad hoc* and piecemeal ratemaking.²⁹

24. COST admits that Option 3 could accomplish harmonization in theory, and commends the few PJM TOs who are pursuing it. Nevertheless, COST and Joint Consumer Advocates contend that the proposed surcharge-then-revenue-credit mechanism does not harmonize with the RTEP cost allocation process and does nothing to ensure that the existing rates of those customers paying the surcharge have been harmonized, especially when those existing rates are already over-recovering costs. COST and NCEMC state that "Responsible Customer" zones to which new facility costs are allocated should be filed with the Commission, not merely posted on the PJM web site. NCEMC states that not filing such designations with the Commission deprives such "Responsible Customers" of an opportunity for Commission review of whether such designation would result in unjust and unreasonable rates.

2. Other Issues

25. COST and NCEMC advise that the PJM Parties are proposing to delete the requirement that Schedule 12 designate the "Responsible Customer" that must pay the Transmission Enhancement Charge, which deprives the

"Responsible Customers" of an opportunity for review by this Commission of such designation and contradicts PJM's August 25, 2003 compliance filing in Docket Nos. ER03-738 and RT01-2, which assured the stakeholders that those designations would be subject to this Commission's review. COST explains that some Responsible Customers are not members of PJM and, for such customers, filing of the "Responsible Customer" designation with this Commission is essential.

26. Detroit Edison and Wisconsin Electric are also concerned that certain language in the newly-filed Schedule 12 (b) could be read to impose certain costs on customers outside of PJM, and protest this language to the extent that it permits PJM to impose charges in MISO and elsewhere outside the PJM footprint. Furthermore, Detroit Edison states that the Commission required in the November 18 Order that PJM, MISO, and their transmission owners "develop a proposal for allocating to the customers in each RTO the cost of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO." Detroit Edison states that the Commission thus recognized that the development of any cross-border transmission pricing in the Combined Region must include parties from both PJM and MISO.

C. Docket No. ER05-515-000

1. Rate of Return on Equity

27. The majority of protestors contend that the proposed 12.4 percent ROE is excessive and that the PHI TOs have not shown it to be just and reasonable. As an initial matter, COST, Joint Consumer Advocates, DEMEC, the Municipalities and PPANJ complain that the proposed ROE of 12.4 percent is based what the PHI TOs' own witness identifies as an "adjusted" midpoint return on equity of 11.5 percent, which includes an unprecedented 90 basis point adjustment that projects increases in yields on 10 year Treasury notes. Municipalities and Joint Consumer Advocates note that this sort of projection is not shared by other analysts.

28. COST, DEMEC and Municipalities assert that the PHI TOs consultant's unreasonable proxy group parameters and composition must be set for full evidentiary investigation and hearing.

2. ROE Incentive Adders

29. Protestors contend that the inclusion of a 50 basis point adder and a 100 basis point adder, which are not tied to performance, have not been justified, should not be approved, and

would not result in just and reasonable rates. Protestors note that in a prior proceeding the Commission directed the TOs to support why the 100 basis point adder is needed to incent investment in transmission facilities and to address whether the proposed adder should apply to all types of transmission expansion or if it should be more narrowly focused on transmission expansions that utilize innovative technologies that result in lower costs, and that the TOs have failed to demonstrate why their incentive rates are necessary. Municipalities and Joint Consumer Advocates further state that the PHI TOs' requested 50 basis point adder did not have any bearing on the PHI TOs' decision to join PJM, and that PJM's current TOs sought PJM membership years ago based on the understanding that membership alone would compensate them enough to justify the costs of participation. Because of this, Municipalities and Joint Consumer Advocates state that approving the 50 basis point adder incentive would serve no useful purpose, nor would it provide customers with any additional benefits. Joint Consumer Advocates state that further, the basis point adders distort the cost benefit analysis and evaluation of alternative competitive solutions by either not being included in the analysis, or imposing additional costs on the solution.

30. COST also contends that the filing is inconsistent in its treatment of capital structure costs and securitization debt. Specifically, COST states that PHI TOs have improperly sought to exclude stranded cost securitization bonds from Atlantic City Electric's (ACE) capital structure.

3. Other Revenue-Related Issues

31. COST and Municipalities state that the TOs' proposal to retain fifty percent of the revenues received from "secondary uses" of the transmission assets (such as rents from telecommunications equipment), rather than netting their entire secondary use revenue to their transmission cost of service, is unjust and unreasonable, since it forces ratepayers to pay for the full costs of these transmission facilities plus a substantial return, while the TOs alternately receive additional revenues on these same facilities already paid for by the ratepayer.

32. DE PSC complains that the PHI formula does not assure the proper functionalization of costs such as generation step-up transformers, capacitors and reactive equipment. DE PSC also points out that revenues from secondary uses of transmission assets

²⁸ *Allegheny Power System Operating Companies*, 106 FERC ¶ 61,016 (2004).

²⁹ *Citing, Carolina Power & Light Co. v. FERC*, 860 F.2d 1097 (D.C. Circuit), and *Florida Power and Light Co. v. City of Miami*, 92 F.2d 180, 183 (5th Cir 1938) (Federal appellate court rejecting a proposal to add new facilities costs atop an existing point-in-time rate base).

should be credited in full to costs, but are not credited in the proposed PHI formula.

33. Municipalities and Joint Consumer Advocates state that the formula is flawed because it does not clearly exclude cost recovery for non-transmission plant items such as generation interconnection equipment, dual purpose substations, or non-utility business expenses. Municipalities also complain that the basis of the projected rate divisors used in the formula rates appears in none of the filings, and the source is simply indicated as "PJM Data". Municipals state that this reference is too vague to satisfy the criteria for a formula rate that the data can be immediately auditable.

34. FirstEnergy Companies supports the PHI formula, but states that it would be inappropriate for FirstEnergy Companies to adopt a similar rate design because: (1) Their zonal stakeholders are not in favor of a change to a formula rate, (2) there is no Commission precedent that indicates that adoption of a formula rate is mandatory, and (3) under the PJM Tariff and the TOs' Agreement, each transmission owner has the right under section 205 of the FPA to propose to change its zonal rate and therefore, the PHI formula rate should have no effect as to the rate design of the remaining PJM zones.

35. PPANJ asserts that the proposed formula fails to compensate for the use of customer-owned transmission plant. PPANJ states that its member Vineland Municipal Electric Utility (VMEU) owns transmission facilities that are integrated with those of ACE and provide benefits to ACE and the PJM system, and that VMEU agreed to allow its transmission facilities to be dispatched by PJM, but the formula proposed by ACE does not provide for any credit to VMEU for the cost of VMEU's facilities. PPANJ asserts that this omission violates the Commission's policy that customers are entitled to a credit for certain transmission plant under the control of the RTO, which requirement is included in the PJM OATT,³⁰ and that the Commission has recently interpreted this section as requiring credit for customer-owned transmission facilities that are integrated with those of the transmission provider.³¹

36. Protestors state that the proposed formula rate must have customer safeguards in order to produce just and reasonable results. DEMEC contends that adequate customer safeguards are necessary in order to assure transparency in the proposed formula rate and to ensure that all affected entities are afforded adequate due process. Further, if the formula rate proposal is accepted for filing, COST requests that the Commission require the adoption of its procedural protocols to give affected customers an adequate opportunity to review and verify that the appropriate amounts are being input to the formula. Municipalities argue that the TOs should be required to notify their customers of specific accounting changes and policies that may ultimately affect the rate charged. NCEMC expresses concern that the proposed formula rate permits the PHI TOs to recover incremental transmission investment without requiring them to file to revise their Network Integration Transmission Service rates reflecting this change. NCEMC states that this approach may result in an over-recovery of costs and may result in a transmission customer paying both a portion of the incremental transmission investment and the embedded cost transmission rate, which would be inconsistent with the Commission's long-standing prohibition against "and" pricing.³²

4. Waiver of Filing Requirements

37. COST, DEMEC, DE PSC, Municipalities and PPANJ oppose the request for waiver of Period I and Period II cost of service information. Municipalities, COST and DEMC argue that they cannot fully assess the proposed formula because neither Docket Nos. ER05-513 nor ER05-515 includes sufficient data. Specifically, they note that the TOs are proposing a major change in how rates are set but that ER05-513 includes only a concept with no data and ER05-515 contains limited and stale data for the year prior to the proposed effectiveness of the formula.³³ COST and DEMEC also note that many of inputs to the formula come not directly from the Form 1 filings, but

with the transmission provider's system, but must also provide additional benefits to the transmission grid in terms of capability and reliability, and be relied upon for the coordinated operation of the grid").

³² NCEMC cites *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, FERC Stats. and Regs. ¶ 31,005, at 31,146 (1994).

³³ E.g., Municipalities advise that the TOs admit that the data is not accurate for at least one who will undergo substantial reclassification. *Citing* ER05-515-000 transmittal letter, n.8.

from adjustments to those numbers as evidenced by the multitude of "notes" to the formula. Municipalities request that the Commission require the TOs to submit annual informational filings for the rate year reflecting the most accurate, available data providing, *inter alia*, information supporting the data not otherwise available in the FERC Form 1,³⁴ and not merely post the results on PJM's website. COST and DE PSC assert that the Commission should reject the formula rate filings, or in the alternative, set them for hearing.

Discussion

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2003), the notices of intervention and the timely, unopposed motions to intervene serve to make the intervenors parties to this proceeding. Given the early stage of this proceeding, the absence of any undue prejudice or delay, and their interest in this proceeding, we grant the untimely, unopposed motions to intervene. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a) (2) (2003), prohibits an answer to a protest unless otherwise permitted by the decisional authority. We are not persuaded to allow the answers, and accordingly we will reject them.

B. Analysis

1. Docket No. ER04-156-006

39. The PJM Settling Parties have made the compliance filing required by our order, and seek continuation of PJM's current zonal rate design. However, the Commission has previously recognized that in an RTO or ISO environment, it is no longer clear that a zonal rate design is necessarily just and reasonable. We recently found, in evaluating two competing rate proposals for a new transmission rate design to supersede through and out rates, that neither proposal, including the zonal rate design, had been shown to be just and reasonable and might be unjust and unreasonable.³⁵

³⁴ *Citing Southern Company Services*, 99 FERC ¶ 61,069 (2002) (requiring projections of formula rate billing determinants and revenues); *Florida Power & Light Co.*, 67 FERC ¶ 61,326 at p. 62.147 (1994) (requiring filing of Period I and Period II data to adopt formula rates).

³⁵ *Midwest Independent Transmission System Operator*, 110 FERC ¶ 61,107 at P 3 (2005), *citing* November 18 Order. *See also New PJM Companies*, 108 FERC ¶ 61,140 at P 40 (2004) ("the Commission has accepted license plate rate designs for new RTO entrants on a transitional basis, and * * * we [recently] reaffirmed our commitment to retaining

Continued

³⁰ *Citing* Section 30.9 of the PJM Tariff.

³¹ PPANJ cites to *Southwest Power Pool, Inc.* 108 FERC 61,078 (2004) at Par. 19, *order on remand from East Texas Electric Cooperative, Inc. v. FERC*, 331 F.3d 131 (D.C. Cir. 2003) ("The Commission stated that the intent of section 30.9 of the pro forma tariff was that, for a customer to be eligible for a credit, its facilities must not only be integrated

40. We also view the arguments put forward by AEP as potentially demonstrating that modified zonal rates are, in fact, not just and reasonable in a situation such as that faced by AEP and other new PJM entrants now. AEP alleges that it has provided significant new 500 kv transmission capacity to the PJM system, and it anticipates that under modified zonal rates the majority of costs for that contribution will be recovered from load in AEP's transmission zone, despite the fact that it is now serving all PJM members. AEP further alleges that, once the SECA mechanism previously adopted by the Commission expires,³⁶ it will no longer be able to collect a significant portion of the charges for external transactions that it is now recovering through the SECA.

41. The Commission therefore finds, pursuant to its authority under section 206, that PJM's current modified zonal rate design may not be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. We therefore set PJM's modified zonal rate design for hearing, and we will require PJM and all of its TO members (not just the PJM Settling Parties who made the filing in Docket No. ER04-156-006) to address the justness and reasonableness of the zonal rate design in that hearing.

42. Pursuant to section 206(b) of the FPA, the Commission must establish a refund effective date that is no earlier than 60 days after the publication of notice of the Commission's intent to institute a proceeding, and no later than five months subsequent to the expiration of the 60-day period. The Commission will establish a refund effective date of 60 days from publication of notice of the Commission's initiation of a hearing. The Commission is also required by section 206 to indicate when it expects to issue a final order. The Commission expects to issue a final order in this section 206 investigation within 180 days of the date this order issues.³⁷

revenue neutrality for companies that join RTOs. This does not mean, however, that the Commission must find any license plate rate, or any rate mechanism submitted by a company with proposed revisions to their cost of service just and reasonable simply because the company claims that it maintains revenue neutrality").

³⁶ In an order issued on November 30, 2004, the Commission expanded AEP's, ComEd's and DP&L's ability to recover lost revenues resulting from the integration with PJM through the SECA transition methodology, which expires on March 31, 2006. *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,243 at P 9 (2004) (November 30 Order).

³⁷ The Commission is not consolidating this proceeding, which involves PJM's internal rate design, with the LTPS proceeding in Docket No. EL02-111-000, which addresses rate design

2. Docket No. ER05-513-000

43. The Commission will accept the PJM TOs' filing in Docket No. ER05-513-000, to become effective on June 1, 2005. This filing establishes general parameters under which TOs can file to recover the costs of reliability expansions. Protesters have raised questions primarily with respect to Option Two, insofar as this option will enable TOs to file to recover only the costs of RTEP expansions.

44. In their protests regarding the PJM TOs' Option Two, the protesters argue, in essence, that Option Two would not harmonize a TO's revenue recovery for its existing facilities with its revenue recovery for a new project built through the RTEP process, in that the combination of these two methods of revenue recovery could create a potential for over-recovery of the TO's overall costs for all of its facilities, and that there can be no rate proposal for the recovery of the costs of new transmission investment without an examination of whether the existing transmission rates already recover more than the applicant's cost to provide service over its existing facilities.

45. The Commission will accept Option Two, because, this option provides full recovery of all reasonably incurred costs related to the regulated solutions and development undertaken pursuant to the PJM RTEP process and it provides the necessary incentives for transmission owners to build RTEP upgrades quickly, which will benefit all customers.³⁸ In a recent order regarding the New York Independent System Operator (NYISO), we accepted a rate mechanism that is limited to the recovery of transmission-related costs incurred to meet a reliability need included in New York's Comprehensive Reliability Plan, separate from the transmission service charge and the transmission adjustment charged.³⁹ This option also is consistent with our April 2004 Policy Statement on Matters Related to Bulk Power System Reliability, in which we assured public utilities that the Commission will stand by its policy to approve applications to

between PJM and MISO. However, if the parties believe that these proceedings are interrelated, either for purposes of settlement or hearing, they can file motions for consolidation of proceedings before the Administrative Law Judge (ALJ) in each proceeding.

³⁸ The filing in Docket No. ER05-513-000 does not address the question of ROE adders with respect to Option Two, and the Commission therefore will not address here whether such adders are appropriate in light of the incentive already provided by Option Two to construct upgrades.

³⁹ *New York Independent System Operator, Inc.*, 109 FERC ¶ 61,372 at P 28 (2004), *order on reh'g*, 111 FERC ¶ 61,182.

recover prudently incurred costs necessary to ensure bulk electric system reliability.⁴⁰

46. Protesters object to this option because of a concern that it may permit certain transmission owners to continue to overrecover their cost-of-service. However, this option provides just and reasonable cost recovery for the RTEP upgrades, and provide the necessary incentive for TOs to complete quickly the construction of RTEP projects that are essential to the efficient operation of PJM. As we said in the NYISO proceeding, if a concern arises regarding over-recovery of transmission costs, such parties are free to seek relief by filing a complaint with the Commission pursuant to section 206 of the FPA.⁴¹

47. In adopting Option 2, however, we recognize that we do not have before us an actual proposal as to how costs will be recovered under this option. Depending on the form of such a filing, we may need to impose certain reporting requirements or true-up mechanisms with respect to such a filing.

48. Additionally, while we accept Option Three, we will require the PJM TOs to make a compliance filing, within 30 days of the date of this order, providing that any TO selecting Option Three must also make an informational filing with the Commission one year from the date its formula rates go into service, and each year thereafter, providing a detailed list of the costs it has incurred, and the revenues it has received, to provide service.

49. Finally, we will also order the PJM TOs to make a compliance filing, within 30 days of the date of this order, restoring the requirement that under Schedule 12, PJM must designate the "Responsible Customer" that must pay the Transmission Enhancement Charge in such a way as to allow customers to obtain Commission review of those designations.

3. Docket No. ER05-515-000

50. Our preliminary analysis indicates the PHI TOs' filing in Docket No. ER05-515 has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept that filing and nominally suspend it to become effective on June 1, 2005, subject to refund, as requested, and subject to the outcome of a hearing.

⁴⁰ *Policy Statement On Matters Related To Bulk Power System Reliability*, 107 FERC ¶ 61,052 (2004).

⁴¹ See *New York Independent System Operator*, 111 FERC ¶ 61,182 at P 24 (2005).

51. In *West Texas Utilities Company*,⁴² the Commission explained that when its preliminary examination indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in West Texas, the Commission would generally impose a five-month suspension. It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.⁴³ Such circumstances exist here where the Commission has, in fact, urged transmission owners to move from stated rates to formula rates, and where customers would also benefit from the incentive provided by these rate changes to the PHI TOs to commence construction of RTEP upgrades. Accordingly, the Commission will exercise its discretion to suspend the revisions to the PHI TOs' rates for a nominal period and permit the rates to become effective June 1, 2005, subject to refund and the outcome of the hearing established in this order.

52. As noted above, protesters raise numerous issues regarding the reasonableness of the proposed rates that are best addressed in the hearing we order below. At the hearing, the PHI TOs will be required to support and justify the justness and reasonableness of their proposal.

53. Among the issues that we are setting for hearing are the request for the 100 basis point transmission investment ROE adder and the 50 basis point adder for RTO membership, and we here provide specific directives for the parties to address with regard to these two issues. The Sponsoring TOs have provided support for the 100 basis point adder for all transmission facilities constructed under the RTEP. Consistent with our rehearing order in *ISO New England*,⁴⁴ we direct the parties and the presiding judge to develop a record, in this case, addressing the pros and cons of applying a 100 basis point adder for investments that, among other things: (i) Are approved through the RTEP process; (ii) are capable of being installed relatively quickly; (iii) include the use of improved materials that allow significant increases in transfer capacity using existing rights-of-way and structures; (iv) utilize equipment that allows greater control of energy flows, enabling greater use of existing facilities; (v) has sophisticated

monitoring and communication equipment that allows real-time rating of transmission facilities, facilitating greater use of existing transmission facilities; or (vi) is a new technology and/or innovation that will increase regional transfer capability.

54. With regard to the 50 basis point adder for RTO membership, we note that in a prior order regarding ISO New England, we recognized the need to provide appropriate incentives for transmission expansions in RTOs, and granted the New England Transmission Owners a 50 basis point adder on their ROE for Regional Network Service (RNS) revenue.⁴⁵ Here, however, as the protesters point out, PJM's current TOs became PJM members many years ago, so that the 50 basis point adder will not specifically serve as an incentive to those TOs to join an RTO. We therefore direct the parties to consider at hearing whether an adder is appropriate here.

55. In Docket No. ER05-515-000, the PHI TOs request waiver of Statements AA through BL and waivers of section 35.13 of the regulations,⁴⁶ including waiver the full Period I and Period II, and 35.13(a)(2)(iv) to determine if a proposed change constitutes a rate increase based on Period I-Period II rates and billing determinants. Protestors request that the Commission deny waiver of the cost-of-service statements required under 18 CFR § 35.13. They also state that they need customer protection mechanisms to ensure adequate review of the inputs to formula and request that the Commission direct the PHI TOs to file the April 30, 2005, rate update with the Commission.

56. We will grant waiver of our requirements as to the filing of the requirement of section 35.13 to provide full Period I and Period II data, and 35.13(a)(2)(iv). The filing by the PHI TOs is to establish a formula rate using Form 1 data and, therefore, it is not clear that full Period I and Period II data are needed to evaluate this proposal. However, to the extent that parties at the hearing can show the relevance of additional information to the evaluation of this proposal, the ALJ can provide

appropriate discovery of such information.

57. The applicants seek waiver of the requirement that rates be filed 120 days prior to the proposed effective date, stating in support that the settlement in Docket No. ER04-156 provided specifically that any section 205 rate filing would become effective on June 1, 2005. The early filing provided all parties with additional time to review the filings. The Commission will grant the requested waiver.

The Commission orders:

Docket No. ER04-156-000

(A) The Commission accepts the PJM Settling Parties' filing in Docket No. ER04-156-000 as satisfying those parties' obligation to reevaluate the PJM rate design.

Docket No. ER05-513-000

(B) The Commission accepts the PJM TOs' filing in Docket No. ER05-513-000, to become effective June 1, 2005, subject to the conditions and compliance obligations discussed in the body of the order.

(C) The Commission further requires the PJM TOs to make a filing within 30 days of the date of this order, providing that, as discussed above, any transmission owner selecting Option Three must make an informational filing with the Commission one year from the date its formula rates go into service, and each year thereafter, providing a detailed list of the costs it has incurred, and the revenues it has received, to provide service.

Docket No. ER05-515-000

(D) In Docket No. ER05-515-015, the PHI TOs' proposed Schedule 12 and Attachments H-1, H-2, H-3 and H-9 to PJM's OATT are hereby accepted for filing and suspended to become effective on June 1, 2005, subject to refund, and to the outcome of a hearing, as discussed in the body of the order.

(E) The Commission will grant waiver of the requirement that parties file new rates no more than 120 days before the rates go into effect.

(F) The Commission grants waiver of the requirement of section 35.13 to provide full Period I and Period II data, and 35.13(a)(2)(iv) to determine if and the extent to which a proposed change constitutes a rate increase based on Period I-Period II rates and billing determinants.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the

⁴² 18 FERC ¶ 61,189, at 61,374 (1982) (West Texas).

⁴³ *California Independent System Operator Corporation*, 105 FERC ¶ 61,406 (2003).

⁴⁴ *Id.* at P 206.

⁴⁵ *ISO New England*, 106 FERC ¶ 61,280 at P 245-46 (ISO-NE) (2004) ("We agree with the ROE Filers that their voluntary proposal to establish RTO-NE and their commitment to transfer the day-to-day operational control authority over their transmission facilities to RTO-NE, warrants a 50 basis point incentive adder to the ROE component recovered in RTO-NE's transmission rates for Regional Network service. Accordingly, we will accept this incentive adder with respect to these facilities without suspension or hearing"), order on reh'g, 109 FERC ¶ 61,147 (2004).

⁴⁶ 18 CFR 35.13 (2004).

Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held in Docket No. ER05-515-000 concerning the justness and reasonableness of proposed formula rates in Attachment H to the PJM OATT, as discussed in the body of this order.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in the Docket No. ER05-515-000 proceedings, to be held within approximately fifteen (15) days from the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

Docket No. EL05-121-000

(I) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held in Docket No. EL05-121-000 concerning the justness and reasonableness of PJM's modified zonal rates, as discussed in the body of this order.

(J) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in the Docket No. EL05-121-000 proceedings, to be held within approximately fifteen (15) days from the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(K) Any interested person desiring to be heard in the proceedings in Docket No. EL05-121-000 should file a notice of intervention or motion to intervene

with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) within 21 days of the date PJM makes the filing directed in Paragraph (B) above.

(L) The Secretary is directed to publish a copy of this order in the **Federal Register**.

(M) The refund effective date established pursuant to section 206(b) of the FPA will be 60 days following publication of this order in the **Federal Register** as discussed in Ordering Paragraph (L) above.

By the Commission. Chairman Wood concurring in part with a separate statement attached. Commissioner Kelliher dissenting in part with a separate statement attached. Commissioner Kelly dissenting in part with a separate statement to be issued later.

Linda Mitry,

Deputy Secretary.

Appendix A

Docket No. ER04-156-006

Interventions

Maryland Public Service Commission
Public Utilities Commission of Ohio
PJM Interconnection, LLC
Exelon Corporation
Allegheny Energy Supply Company, LLC
International Steel Group, Inc.
North Carolina Electric Membership Corporation
Borough of Chambersburg, Pennsylvania
D.C. Public Service Commission
Consumers Energy Company (Consumers)
Dominion Virginia Power (Dominion)

Comments/Protests

PJM Industrial Consumer Coalition (PJM ICC)
Pennsylvania Office of Consumer Advocate,
Maryland Office of People's
Counsel, and the Office of the People's
Counsel for the District of Columbia
(Joint Consumer Advocates)
Delaware Public Service Commission (DE
PSC)
Old Dominion Electric Cooperative (ODEC)
The Detroit Edison Company (Detroit Edison)
Exelon Corporation
Customers and Officials for Sensible
Transmission (COST);
Allegheny Electric Cooperative, Inc.,
American Municipal Power-Ohio
Blue Ridge Power Agency
Borough of Chambersburg, Pennsylvania
Central Virginia Electric Cooperative
City of Dowagiac, Michigan
City of Hagerstown, Maryland
City of Sturgis, Michigan
Craig-Botetourt Electric Cooperative
Delaware Municipal Electric Corporation,
Inc.
Delaware Public Service Commission
Harrison Rural Electrification Association
Indiana Municipal Power Agency
Old Dominion Electric Cooperative

PJM Industrial Consumer Coalition
Public Power Association of New Jersey
Southern Maryland Electric Cooperative
Town of Easton, Maryland
Town of Front Royal, Virginia
Town of Thurmont, Maryland
Town of Williamsport, Maryland
Virginia Municipal Electric Association
No. 1

American Electric Power Service Corporation
(collectively AEP)
Appalachian Power Company, Columbus
Southern Power Company,
Indiana Michigan Power Company,
Kentucky Power Company, Kingsport
Power Company, Ohio Power Company,
and Wheeling Power Company

Docket No. ER05-513-000

Interventions

Maryland Public Service Commission
Public Utilities Commission of Ohio
PJM Interconnection, LLC
Allegheny Energy Supply Company, LLC
International Steel Group, Inc.
Borough of Chambersburg, Pennsylvania
Consumers
PJM Industrial Customer Coalition
D.C. Public Service Commission
Pennsylvania Public Utilities Commission
PEPCO Holdings, Inc., and its operating
affiliates; Potomac Electric Power
Company, Atlantic City Electric
Company, Delmarva Power & Light
Company (PHI Companies)
UGI Utilities, Inc.
PPL Electric Utilities Corporation (PPL)
New Jersey Board of Public Utilities (NJBP)
Muni-Coop Coalition;
Blue Ridge Power Agency
Central Virginia Electric Cooperative
City of Dowagiac, Michigan
City of Sturgis, Michigan
Craig-Botetourt Electric Cooperative
Harrison Rural Electrification Association
Indiana Municipal Power Agency
Old Dominion Electric Cooperative
Virginia Municipal Electric Association
No. 1
International Steel Group
ODEC
FirstEnergy Companies (Jersey Central Power
& Light Company, Metropolitan Edison
Company, Pennsylvania Electric
Company)
Dominion Virginia Power (Dominion)
Baltimore Gas and Electric Company
Comments/Protests
Joint Consumer Advocates
DE PSC
North Carolina Electric Membership
Corporation
American Municipal Power—Ohio, Inc.
(AMP Ohio)
Southern Maryland Electric Cooperative
North Carolina Electric Membership
Corporation (NCEMC)
Wisconsin Electric Power Company
Detroit Edison
City and Towns of Hagerstown, Thurmont,
and Williamsport, Maryland, and Town
of Front Royal, Virginia (Municipalities)
Delaware Municipal Electric Corporation
(DEMEC)
Maryland Office of People's Counsel

Easton Utilities
Public Power Association of New Jersey (PPANJ)
Customers and Officials for Sensible Transmission (COST);
Allegheny Electric Cooperative, Inc.,
American Municipal Power-Ohio
Blue Ridge Power Agency
Borough of Chambersburg, Pennsylvania
Central Virginia Electric Cooperative
City of Dowagiac, Michigan
City of Hagerstown, Maryland
City of Sturgis, Michigan
Craig-Botetourt Electric Cooperative
Delaware Municipal Electric Corporation, Inc.
Delaware Public Service Commission
Harrison Rural Electrification Association
Indiana Municipal Power Agency
Old Dominion Electric Cooperative
PJM Industrial Consumer Coalition
Public Power Association of New Jersey
Southern Maryland Electric Cooperative
Town of Easton, Maryland
Town of Front Royal, Virginia
Town of Thurmont, Maryland
Town of Williamsport, Maryland
Virginia Municipal Electric Association
No. 1

Docket No. ER05-515-000

Interventions

Maryland Public Service Commission
Exelon Corporation
PJM Interconnection, L.L.C.
Pennsylvania Public Utilities Commission
PPL Electric Utilities Corporation
Rockland Electric Company
Allegheny Energy Supply Company
Public Utilities Commission of Ohio
Allegheny Power
PJMICC
D.C. Public Service Commission
Borough of Chambersburg, Pennsylvania
Muni-Coop Coalition
PSEG Companies
UGI Utilities, Inc.
ISG Sparrows Point/International Steel
NJBP
Virginia State Corporation Commission
Wisconsin Electric Power Company
New Jersey Ratepayer Advocate
Constellation Energy Commodities Group
Dominion

Comments/Protests

Southern Maryland Electric Company*
Allegheny Electric Cooperative*
FirstEnergy Companies
DEMEC
DE PSC
Detroit Edison
Municipalities
Joint Consumer Advocates
Maryland Office of People's Counsel
ODEC
Easton Utilities*
COST
PPANJ

WOOD, Chairman, *concurring in part:*

In Docket No. ER05-513, I believe that a better policy outcome would have been for the Commission to show a strong preference for formula rates, similar to the Parties' proposed Option Three. Under Option Three, formula rates will decrease as existing assets

depreciate and the rates will increase when TOs construct new transmission assets (and this is exactly how all TOs in the Midwest ISO recover the costs incurred in the construction of new facilities.) One major benefit of formula rates is that they provide TOs with a relatively simple way to recover new transmission investment in the year that the facility is placed in service, without having to wait for the next rate case, while efficiently protecting customers from overcharges by reflecting decreased costs (due, for example, to depreciation of existing plant). However, since the Three Option proposal set forth by the PJM TOs is not unjust or unreasonable per se, I will concur with respect to this issue.

In Docket No. ER05-515, the issue of the 50 basis point adder is a policy determination which, unlike the situation of the Midwest ISO in Docket No. ER02-485, has had proper notice and received substantial commentary from parties to this proceeding. Based on these pleadings, I believe that the existing record supports the 50 basis point adder for RTO membership without having to reexamine this issue in a hearing. However, since some parties have raised general questions about the adder, I see no harm to err on the side of caution and to permit further inquiry into the 50 basis point adder at the hearing. For these reasons, I concur on this issue.

Pat Wood, III,

Chairman.

Joseph T. KELLIHER, Commissioner
dissenting in part:

I disagree with the Commission's decision to set the PHI TOs' request for a 50 basis point adder for RTO membership for hearing insofar as the proposal would extend the incentive to existing members of PJM. The purported purpose behind the 50 basis point adder is to provide an incentive for transmission owners to join an RTO.⁴⁷ However, under the proposal, the 50 basis point adder would be given not only to new PJM members, but also to transmission owners who were already members of PJM when this policy was announced. I fail to see how granting a 50 basis point adder to existing members of PJM, some of whom joined over fifty years ago, accomplishes the goal of creating an incentive for new members to join. Self-evidently, a 50 basis point adder is not necessary to entice existing members of PJM to join, since they already are members. Nor do I see any nexus between providing an incentive to longstanding members of PJM and the goal of providing an incentive for non-members to join an RTO. Instead, this strikes me as merely providing a windfall to existing members of PJM, many of whom decided long ago to sign up as members.

In my view, the PHI TOs have failed to demonstrate the justness and reasonableness

of providing longstanding PJM members with a 50 basis point adder that is designed to serve as an incentive for other transmission owners to join the RTO, and I see no point in setting the matter for hearing on the issue of whether the proposal is appropriate here. I would reject the proposal outright. Accordingly, I dissent in part from the order.

Joseph T. Kelliher.

[FR Doc. 05-11596 Filed 6-13-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05-109-000]

Tax Deduction for Manufacturing Activities Under the American Jobs Creation Act of 2004; Guidance Order on Tax Deduction for Manufacturing Activities Under American Jobs Creation Act of 2004

Issued June 2, 2005.

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

1. This order provides guidance on the Commission's ratemaking policy with respect to the Tax Deduction for Manufacturing Activities (TDMA) in section 102 of the American Jobs Creation Act of 2004 (the Act).¹ The Act provides for a deduction for income attributable to certain domestic production activities, including income from the sale of electricity and natural gas produced in the United States.² The TDMA will have ratemaking implications for public utilities that make jurisdictional sales of electricity at cost-based stated rates or cost-based formula rates, which are discussed further below, but not for jurisdictional natural gas pipelines.

Background

2. On October 22, 2004, the President signed the Act into law. The TDMA provides for a deduction of up to 9 percent³ of the income attributable to qualified production activities. Income from qualified production activities includes income from the lease, rental, sale, exchange or other disposition of electricity, natural gas or potable water

¹ Pub. L. No. 108-357, 118 Stat. 1418 (2004) (adding additional section 199 to the Internal Revenue Code, 26 U.S.C. 1 *et seq.* (2000)).

² Act, section 102, section 199(c)(4)(A)(i)(III) (2004).

³ The TDMA will be phased in so that the allowable deduction equals 3 percent from 2005-2006, 6 percent for 2007-2009, and 9 percent from 2010 onwards. Act, section 102, section 199(a)(2) (2004).

⁴⁷ *Proposed Pricing Policy for Efficient Operation and Expansion of the Transmission Grid*, 102 FERC ¶ 61,032 at P 24 (2003) ("Under this proposed policy, any entity that transfers operational control of transmission facilities to a Commission-approved RTO would qualify for an incentive adder of 50 basis points on its ROE for all such facilities transferred.").

produced in the United States. However, the TDMA does not apply to income attributable to the transmission and distribution of electricity, natural gas and water. When fully implemented, the TDMA will be the equivalent of reducing the effective federal corporate income tax rate on production activities from 35 percent to 32 percent.⁴

Discussion

3. The TDMA is a special deduction that reduces the amount of income tax due from energy sales. The TDMA will have ratemaking implications only for public utilities that make jurisdictional sales of electricity at stated cost-based rates and cost-based formula rates. Income taxes are a cost that is included in the determination of virtually all cost-based rates. Accordingly, we expect these public utilities to appropriately reflect the TDMA amounts in any future filings to change their cost-based stated rates and cost-based formula rates.

4. Additionally, some public utilities utilize cost-based formula rates that are designed to automatically track changes in costs. The Commission is concerned that certain of the formulas established to develop rates may not be structured in a way that will provide an adequate mechanism for tracking the TDMA amount. Accordingly, we direct these public utilities to separately identify the TDMA amounts in any future filings to change their cost-based formula rates.

5. Moreover, since the TDMA only affects rates for jurisdictional entities to the extent that the TDMA amounts are reflected in the cost of service, the TDMA will not have any ratemaking implications for jurisdictional entities to the extent that they engage in the sale of electricity at market-based rates.

6. The TDMA also does not have any ratemaking implications for jurisdictional pipelines. The TDMA applies only to income attributable to qualified production activities, and jurisdictional pipelines do not engage in production activities.

The Commission orders: Public utilities with cost-based stated rates or cost-based formula rates for electric energy sales should appropriately reflect the TDMA amounts in any future filing to change a stated cost-based rate or formula rate.

⁴ For individuals, the reduction in the effective tax rate varies depending on the individual's tax bracket, but, in any case, the amount of the allowable TDMA cannot exceed 50 percent of the individual's W-2 wages of the employer for the taxable year. Act, section 102, section 199(b)(1) (2004).

By the Commission.

Linda Mitry,

Deputy Secretary.

[FR Doc. 05-11659 Filed 6-13-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05-16-000]

Generator Run Status Information

May 27, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) seeks comments on whether the Commission should require jurisdictional generators to provide the Commission with confidential access to generator run status information.

DATES: Comments on this Notice of Inquiry are due on August 15, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the NOI for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

Patricia Morris (Technical Information), Office of Market Oversight and Investigation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, patricia.morris@ferc.gov.

Michelle Veloso (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, michelle.veloso@ferc.gov.

Edward Fowlkes (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, edward.fowlkes@ferc.gov.

Joseph C. Lynch (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, joseph.lynch@ferc.gov.

SUPPLEMENTARY INFORMATION:

Notice of Inquiry

1. The Commission is seeking comments on the need for access to generator run status information from all public utility generators on a confidential basis. Generator run status includes information on the commitment, operating performance and capability of generating units connected to the interconnected transmission system. Confidential access to this information would allow the Commission to better oversee markets by ensuring that generation resources are represented accurately and would allow the Commission to promptly monitor and investigate market abuses and unduly discriminatory behavior thereby upholding the Commission's standards of conduct.

Background

2. With the issuance of Order No. 888, the Commission required public utilities that own, control or operate interstate transmission facilities to file open access transmission tariffs that offer others the same transmission service that they provide themselves. In doing this, the Commission opened wholesale power sales to greater competition.¹ Order No. 889, issued in tandem with Order No. 888, required transmission providers to establish or participate in an Open Access, Same-Time Information System (OASIS) and to comply with prescribed standards of conduct.²

3. The standards of conduct required, among other things, that companies separate their transmission operations from their power sales marketing/merchant functions. The standards of conduct were designed to prevent employees of a public utility, or any of its affiliates, engaged in the power sales

¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12,274 (March 4, 1997), FERC Stats. & Regs., Regulations Preambles July 1996-December 2001 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

² *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, 61 FR 21,737 (1996), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, 62 FR 12,484 (1997), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,049 (1997), *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

marketing/merchant function from obtaining preferential access to transmission information not available to all customers at the same time through public posting on OASIS.

4. The Commission notes that, while OASIS provides information on transmission availability, no similar information is available for generation. The Commission's OASIS II Advanced Notice of Proposed Rulemaking (ANOPR), issued in July 2000, contemplated generator run status information requirements. The ANOPR asked for industry comment on whether generator run status information should be incorporated into OASIS Phase II and posted for public disclosure.³ Most of the comments raised confidentiality concerns.

Generator Run Status

5. In the wake of Order Nos. 888 and 889, the number of companies that generate and sell power and the volume of wholesale trading have increased significantly. Markets have evolved to become more complex and fluid, and now involve the trading of both physical and financial products. This situation has resulted in increased opportunities for the strategic use of generation resources. The Commission monitors the markets to determine whether there is market manipulation.

6. The Commission collects transactional data on sales and purchases through the Electric Quarterly Reports, however, this data does not fully inform the Commission on the real-time operation of supply. By obtaining confidential access to generator run status information, the Commission can complete the picture, and see the electric energy system as a whole.

7. In order to understand the problem facing the Commission, it is necessary to define generator run status. Generator run status reporting would include information on the commitment, operating performance and capability of generating units connected to the interconnected electric transmission system. Generator run status information includes: (a) The status of breakers (open/closed); (b) generating unit megawatts (MW) and megavolt-ampere reactive (MVAR) capability based on generator-tested performance capability data; (c) MW and MVAR net output; (d) the status of automatic voltage control facilities; (e) unit dispatch levels; (f) unit outages or deratings, including the reasons for the

outages or deratings; (g) the date and time when the unit was taken out of service or derated and the estimated (and, later, the actual) date and time when the unit was expected back online following an outage or derating; and (h) generator-tested performance capability data.

8. Generator run status information can help the Commission to identify the selective withholding of generation and the misrepresentation of generating capacity to influence market prices. During the Western energy crisis the potential was demonstrated for market participants to use generation resources to thwart competition. Between January 2000 and June 2001, market participants in the California ISO sold ancillary services in the day-ahead market, even though they did not have the required resources to provide the ancillary services. Market participants also sold non-firm energy as firm energy without possessing the dedicated resources necessary to supply firm energy.⁴

9. The Commission also recognizes the potential for control area operators and scheduling authorities with their own generation or with generation affiliates to dispatch their units to the prejudice of other lower-priced generation. Although public utilities usually dispatch generating units based on the application of an algorithm to system conditions and constraints, the algorithm cannot take all conditions into consideration. A system operator may dispatch generation out-of-merit⁵ due to changing forecasts or sudden, extraneous events in current operating conditions such as generator or transmission system forced outages. This leaves open the opportunity to dispatch their own or their affiliate's higher-cost generating units, rather than dispatching a competitor's lower cost generating units.

10. The Commission recognizes the potential impact of improper generator dispatch upon transmission system capability and appreciates that changes in generator run status may affect third parties due to reduced transfer capability. Reduced transfer capability diminishes the capacity for market participants to move power. Generator run status information can allow the Commission to monitor the effects of

generator operations on transmission system performance.

11. Access to confidential generator run status information would, for example, allow the Commission to: (a) Ensure the accurate representation of generating capacity; (b) identify patterns of strategic behavior; (c) monitor for undue discrimination or preference in the dispatch of generation resources; and (d) better assess the validity of complaints. Currently, the Commission can obtain the data necessary to accomplish these goals through individual data requests and by subpoena in formal investigations. This necessarily occurs long after the events at issue. More timely access to this information will permit the Commission, among other things, to more promptly address misuse and misrepresentation of generator availability to influence market behavior.

Considerations in Collecting Generator Run Status Information

12. In response to the OASIS II ANOPR, the North American Electric Reliability Council's (NERC) Electronic Scheduling Collaborative (ESC) noted that an overwhelming majority of ESC members opposed disclosure of generator run status information. With deference to minority opinion, the ESC filed two alternative position papers on generator run status, one in favor of disclosure and the other against.⁶

13. Those favoring the disclosure of generator run status information maintained that disclosure of generator run status information would provide appropriate market signals and create disincentives for market participants to improperly withhold capacity from the market, while providing essential information to directly measure the exercise of horizontal market power. The position paper supporting disclosure of generator run status explained:

Generator run status is a critical element of information used by many entities to ensure the operating security of the interconnected electric system. It should also be a component of the information base made available to all participants in the bulk power market to ensure appropriate market responses to real-time operating conditions, to provide the transparency needed for economically efficient markets, and to add discipline and market power mitigation

⁴ See, e.g., *American Electric Power Service Corporation*, 103 FERC ¶ 61,345 at P51-55 (2003), *reh'g denied*, 106 FERC ¶ 61,020 (2004). See also, *Final Report on Price Manipulation in Western Markets: Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, Docket No. PA02-2-000 (March 2003) (Final Report).

⁵ Out-of-merit dispatch is a dispatch sequence in which the least cost generator is not dispatched to supply the next increment of system load.

⁶ *Response of the Electronic Scheduling Collaborative* (Docket No. RM00-10-000 July 14, 2000).

³ *Open Access Same-Time Information System Phase II*, 92 FERC ¶ 61,047 (2000). The Commission has not yet implemented OASIS Phase II.

through analysis of data to reveal patterns of strategic behavior.⁷

14. The position paper opposing the disclosure of generator run status information contended that generator run status information is proprietary, commercially sensitive information. It argued that a generating facility is the private property of its owners and that such information is proprietary. It also asserted that disclosure of such information to the market could devalue the asset and "essentially represents a confiscation of a portion of the asset itself."⁸ Those objecting to the disclosure of generator run status information further contended that making generator run status information generally available would allow some participants in the market to gain an unfair advantage over others.

15. The Commission is persuaded that certain information pertaining to generator characteristics and operation is proprietary and commercially sensitive. However, the Commission also believes that knowledge by market participants of current market conditions is vital to achieve a fully competitive, and least-cost market. Therefore, the Commission is soliciting responses relating to the confidential treatment of the information versus the release of certain generator run status data elements that could be made available to the marketplace to satisfy these objectives without compromising the legitimate competitive position of generators, and which information should be kept confidential. The Commission intends to respect commercially sensitive information by collecting and maintaining commercially sensitive information on a confidential basis.

Comments Requested

16. The Commission encourages comments regarding the topics above. In addition, the Commission seeks responses to the following specific questions:

a. Which data elements of generator run status, listed previously, should the Commission collect or have access to? In addition, please comment, among other things, on whether the Commission should collect: (1) Generator logs for all 8,760 hours of the year; (2) balancing authority operating logs; (3) raw data as provided to NERC

for its GADS database; (4) capability performance testing results; and (5) equivalent demand forced outage rate (EFORD) data.

b. Should the Commission collect this generator run status information on a regular basis, or instead require public utility generators to maintain generator run status information to provide to the Commission on short notice when requested?

c. How is this data currently collected by industry participants? What would be the burden on the electric industry to make this information on generator run status available to the Commission?

d. Is there other information that would be more appropriate to collect, such as that obtained by NERC for their Generator Availability Data System (GADS)?

e. What should be the frequency of reporting/collection? Should the Commission request generator run status information for the peak operating hour each day, or is some other period more appropriate?

f. What real-time data might facilitate a more efficient market by enabling market participants to respond to current conditions?

g. How might the reporting requirements differ between regions with organized markets under RTOs and ISOs versus those without organized markets?

h. Which specifically, of the generator run status data elements could be made available to market participants and which should be withheld due to their commercial sensitivity. Should some of the data originally held confidentially be released publicly after a set time period?

Comment Procedures

17. The Commission invites interested persons to submit comments on these matters and any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 15, 2005. Comments must refer to Docket No. RM05-16-000, and must include the commenter's name, the organization represented, if applicable, and their commenter's address.

18. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory

Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

19. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

20. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426. E-Mail the Public Reference Room at public.referenceroom@ferc.gov or (202) 502-8371.

21. From the Commission's Home Page on the Internet, this information is available in its eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

22. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

By direction of the Commission.

Linda Mitry,

Deputy Secretary.

[FR Doc. 05-11535 Filed 6-13-05; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OAR-2002-0073, FRL-7923-8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transshipment, and Feedstock Use of Ozone-Depleting Substances, EPA ICR Number 1432.25, OMB Control Number 2060-0170

AGENCY: Environmental Protection Agency (EPA).

⁷ Response of ESC, Generator Run Status: Position Paper Supporting Data Disclosure to the Market Within OASIS Phase II, Attachment 7 at 2 (January 29, 2001).

⁸ Response of ESC, Generator Run Status: Position Paper Opposing Data Disclosure to the Market Within OASIS Phase II Attachment 7 at 5 (January 29, 2001).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a renewal continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 15, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR-2002-0073, to EPA online using EDOCKET (our preferred method), by e-mail to a-and-r-Docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kirsten M. Cappel, Office of Atmospheric Programs, Stratospheric Protection Division, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (202) 343-9556, facsimile (202) 343-2338, e-mail: cappel.kirsten@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR-2002-0073, which is available for public viewing at the EPA Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the EPA Air Docket is (202) 566-1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that

public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to <http://www.epa.gov/edocket>.

Affected entities: Entities potentially affected by this action are those that produce, import, export, destroy, transform as a feedstock, distribute, or apply controlled ozone depleting substances (ODS).

Title: Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transshipment, and Feedstock Use of Ozone-Depleting Substances, EPA ICR Number 1432.25; OMB Control Number 2060-0170.

Abstract: The international treaty The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and Title VI of the Clean Air Act (CAA) established limits on total U.S. production, import, and export of class I and class II controlled ODS. Under its Protocol commitments, the United States is obliged to cease production and import of class I controlled substances with exemptions for essential uses, critical uses, previously used material, and material that will be transformed, destroyed, or exported to developing countries. The Protocol also establishes limits and reduction schedules leading to the eventual phaseout of class II controlled substances with similar exemptions beyond the phaseout. Additionally, the CAA has its own limits on production and consumption of controlled substances that EPA must adhere to and enforce.

To ensure the United States's compliance with the limits and restrictions established by the Protocol and the CAA, the ODS phaseout

regulations establish control measures for individual companies. The limits and restrictions for individual United States companies are monitored by EPA through the recordkeeping and reporting requirements established in the regulations stated in 40 CFR part 82, subpart A. To submit required information, regulated entities can download reporting forms from EPA's stratospheric ozone Web site (<http://www.epa.gov/ozone/record.index.html>), complete them, and then send them to EPA via U.S. Mail or fax. Upon receipt of the reports, the data is entered and subsequently stored in the Stratospheric Protection Tracking System (Tracking System). The Tracking System is a secure database that maintains all of the data that is submitted to EPA and allows the Agency to: (1) Maintain control over total production and consumption of controlled substances to satisfy conditions of the CAA and fulfill the United States's obligations under the Protocol; (2) monitor compliance with limits and restrictions on production, imports, exports, and specific exemptions to the phaseout for individual U.S. companies; and (3) enforce against illegal imports and violations related to the control of class I and class II substances. Additionally, reporting on the exemptions permits an entity to retain the benefit of being able to produce or import a controlled class I ODS beyond the date of complete phaseout.

EPA is developing an electronic reporting system through the Agency's Central Data Exchange (CDX) that will allow regulated entities to download, complete, and submit reports electronically. Electronic reporting is expected to make the reporting process more effective and efficient for reporting companies and EPA. When electronic reporting becomes available, EPA will change its guidance document and its ICR to indicate a reduction in burden hours.

Pursuant to regulations 40 CFR part 2, part B, reporting businesses are entitled to assert a business confidentiality claim covering any part of the submitted business information as defined in 40 CFR 2.201(c).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA requests comments on the following estimated burden hours and costs adapted from ICR number 1432.22. EPA may revise the calculations based on recently submitted class I and class II data to more accurately reflect implementation of the ODS phaseout. Recordkeeping and reporting requirements for class I ODS may have decreased over time as the phaseout of controlled ODS has matured.

The accelerated phaseout rule for ODS requires respondents to submit reports to the Agency and maintain records. The estimated total number of respondents is 253 and the frequency of responses is quarterly and/or annually. The total burden hours is estimated to be about 5,553. Operating and maintenance (O&M) costs include file storage, photocopying, and storage, and postage. They also include the general upkeep of start-up capital equipment, as well as any purchase of services such as contractor or auditing services. O&M costs are estimated at \$3,032 for the accelerated phaseout rule for ODS. The burden hours and costs are as follows: (a) Respondent's annual burden hours, \$6,876; (b) Respondent's annual labor costs, \$536,328; (c) Respondent's capital/start-up costs (ICR renewal notice), \$0; (d) Respondent's O&M costs, \$3,032; (e) Agency's annual burden hours, \$2,159; (f) Agency's annual labor costs, \$102,125.

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.

Dated: June 5, 2005.

Drusilla Hufford,

*Director, Stratospheric Protection Division,
Office of Air and Radiation.*

[FR Doc. 05-11716 Filed 6-13-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2002-0001; FRL-7718-2]

National Pollution Prevention and Toxics Advisory Committee (NPPTAC); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (Public Law 92-463), EPA gives notice of a 2-day meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the NPPTAC is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution, Prevention and Toxics (OPPT).

DATES: The meeting will be held on June 29, 2005 from 8 a.m. to 10 a.m., and on June 30, 2005 from 10 a.m. to 3:30 p.m.

Registration to attend the meeting, identified by docket ID number OPPT-2002-0001, must be received on or before June 24, 2005. Registration will also be accepted at the meeting.

Requests to provide oral comments at the meeting, identified as NPPTAC June 2005 meeting, must be received in writing on or before June 17, 2005.

Written comments, identified as NPPTAC June 2005 meeting, may be submitted at any time. Written comments received on or before June 17, 2005, will be forwarded to the NPPTAC members prior to or at the meeting.

Meetings of the four Work Groups of the Committee will take place as follows. The High Production Volume (HPV) Work Group will meet on June 28, 2005, from 9 a.m. to 5 p.m., to discuss activities related to EPA's HPV Challenge Program. The Pollution Prevention (P2) Work Group will meet on June 28, 2005, from 9:00 a.m. to 5:00 p.m., to discuss activities related to EPA's Pollution Prevention Programs.

The Tribal Issues Work Group will meet on June 29, 2005, from 10:15 a.m. to 5:30 p.m., to discuss activities related to EPA's coordination with Tribes and Tribal Organizations. The Broader Issues Work Group will meet on June 29, 2005, from 10:15 a.m. to 5:30 p.m., to discuss activities related to EPA's New Chemicals and Existing Chemicals Programs.

ADDRESSES: The meeting will be held at the Holiday Inn, Washington/Silver Spring, 8777 Georgia Ave., Silver Spring, Maryland, 20910.

For address information concerning registration, the submission of written comments, and requests to present oral comments, refer to Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution, Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John Alter, (7408M), Office of Pollution, Prevention and Toxics, Environmental Assistance Division, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-9891; e-mail address: npptac.oppt@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 particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individuals, groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. 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-2002-0001. 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.

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 OPPT-2002-0001, NPPTAC June 2005 meeting in the subject line on the first page of your comment.

1. *By mail:* OPPT Document Control Office, Environmental Protection Agency, 7407M, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001.

2. *Electronically:* At <http://www.epa.gov/edocket/>, search for

OPPT-2002-0001, and follow the directions to submit comments.

3. *Hand delivery/courier:* OPPT Document Control Office in EPA East Bldg., Rm. M6428, 1201 Constitution Ave., NW., Washington DC.

II. Background

The proposed agenda for the NPPTAC meeting includes: The High Production Volume Challenge Program; Pollution Prevention, Risk Assessment; Risk Management; Risk Communication, and Coordination with Tribes and other Stakeholders. The meeting is open to the public.

III. How Can I Request to Participate in this Meeting?

You may request to attend the meeting by filling out the registration form according to the instructions listed under Unit I.A. Please note that registration will assist in planning adequate seating; however, members of the public can register the day of the meeting. Therefore all seating will be available on a first come, first serve basis.

1. *To register to attend the meeting.* Pre-registration for the June 2005 NPPTAC meeting, and requests for special accommodations may be made by visiting the NPPTAC web site at: <http://www.epa.gov/oppt/npptac/meetings.htm>. Registration will also be available at the meeting. Special accommodations may also be requested by calling (202) 564-9891, and leaving your name and telephone number.

2. *To request an opportunity to provide oral comments.* You must register first in order to request an opportunity to provide oral comments at the June 2005 NPPTAC meeting. To register visit the NPPTAC web site at: <http://www.epa.gov/oppt/npptac/meetings.htm>. Request to provide oral comments at the meeting must be submitted in writing on or before June 17, 2005, with a registration form. Please note that time for oral comments may be limited to 3 to 5 minutes per speaker, depending on the number of requests received.

3. *Written comments.* You may submit written comments to the docket listed under Unit I.B. Written comments can be submitted at any time. If written comments are submitted on or before June 17, 2005, they will be provided to the NPPTAC members prior to or at the meeting. If you provide written comments at the meeting, 35 copies will be needed.

Do not submit any information that is considered CBI.

List of Subjects

Environmental protection, NPPTAC, pollution prevention, toxics, toxic chemicals, chemical health and safety.

Dated: June 6, 2005.

Wendy C. Hamnett,

Acting Director, Office of Pollution, Prevention and Toxics.

[FR Doc. 05-11717 Filed 6-13-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7923-9]

Proposed Agreement Pursuant to Section 122(a) and (h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the Lakeshore East/Family Golf Course OUs

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice and request for public comment on proposed CERCLA 122(a) and (h)(1) agreement with six former owners and four current owners regarding a voluntary removal action to address radioactively contaminated soils site in Chicago, Illinois.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, notification is hereby given of a proposed administrative settlement agreement regarding a removal action at the site of the former Family Golf Course in Chicago, Illinois. EPA proposes to enter into this agreement under the authority of sections 122(a) and (h) of CERCLA. The proposed agreement has been executed by Illinois Center Plaza Venture, LaSalle Bank National Association as successor Trustee to American National Bank and Trust Company of Chicago (trust numbers 46968, 56375, 45251, 45250, 115883-08), Pepsi Americas, Inc., Mid-America Improvement Corporation, Illinois Center Corporation, Metropolitan Structures, Lakeshore East, LLC, Lakeshore Links, LLC, Lakeshore East Parcel P, LLC, and Lakeshore East Development Group, Ltd. ("Settling Parties"). Under the proposed agreement, the Settling Parties will pay \$71,256.08 (past costs) into a special account. EPA incurred these past response costs in investigating the release of hazardous substances at the site, reviewing and approving the Settling Parties' Work Plan for Investigation and Removal of Radiologically Impacted Soil, and negotiating a resolution of the case. For thirty days following the date of

publication of this notice, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter into this agreement if comments disclose facts or considerations which indicate that the agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before July 14, 2005.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and should refer to: In the Matter of Lakeshore East/Family Golf Course OU5, EPA Docket No. V-W-05-C-817.

FOR FURTHER INFORMATION CONTACT: Cathleen R. Martwick, U.S. Environmental Protection Agency, Office of Regional Counsel, C-14J, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 886-7166 or Mary Fulghum, U.S. Environmental Protection Agency, Office of Regional Counsel, C-14J, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 886-4683. A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601-9675.

Douglas Ballotti,

Acting Director, Superfund Division, Region 5.

[FR Doc. 05-11661 Filed 6-13-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2004-0096; FRL-7718-1]

Asbestos-Containing Materials in Schools; State Request for Waiver from Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Illinois a request for a waiver from the Agency's asbestos-in-schools program. A waiver of these requirements will be granted if EPA determines, after notice

and comment and opportunity for a public hearing, that Illinois is implementing or intends to implement a program of asbestos inspection and management at least as stringent as EPA's program. This notice announces an opportunity for a public hearing on the Illinois waiver request and solicits written comments.

DATES: Written comments under docket ID number OPPT-2004-0096, must be received on or before August 15, 2005. Each comment must include the name and address of the submitter. Any request for a public hearing must be in writing, be received on or before August 15, 2005, and detail specific objections to the grant of the waiver. If, during the comment period, EPA receives such a request for a public hearing, EPA will schedule a public hearing in Illinois following the comment period. EPA will announce the date of the public hearing in the **Federal Register**.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Linter, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Philip King, Asbestos Coordinator, (DT-8J), Region V, Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604; telephone number: (312) 353-9062; e-mail address: king.phillip@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 special interest to teachers and other school personnel, their representatives, and parents in Illinois, and asbestos professionals working in Illinois. Since other entities may also be interested, the Agency has not attempted to describe all entities that may be affected by this action. If you have any questions regarding the applicability of this action to any entity, contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. **Docket.** EPA has established an official public docket for this action under docket identification (ID) number OPPT-2004-0096. 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.

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 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-2004-0096. 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-2004-0096. 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-2004-0096. 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**.

II. Background

A. What Action is the Agency Taking?

EPA is considering granting, with conditions, a waiver of the asbestos-in-schools program to Illinois. This notice is issued, and the waiver, if granted, would be issued under section 203(m) of TSCA and 40 CFR 763.98. Section 203 is within Title II of TSCA, the Asbestos Hazard Emergency Response Act (AHERA).

The Agency recognizes that a waiver granted to any State would not encompass schools operated under the defense dependents' education system (the third type of local education agency (LEA) defined at TSCA section 202(7) and 40 CFR 763.83), which serve dependents in overseas areas, and other elementary and secondary schools outside a State's jurisdiction, which

generally include schools in Indian country. Such schools would remain subject to EPA's asbestos-in-schools program.

B. What is the Agency's Authority for Taking this Action?

In 1987, under TSCA section 203, the Agency promulgated regulations that require the identification and management of asbestos-containing material by LEAs in the nation's elementary and secondary school buildings: the "AHERA Schools Rule" (40 CFR part 763, subpart E). Under section 203(m) of TSCA and 40 CFR 763.98, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, EPA may waive, in whole or in part, the requirements of the asbestos-in-schools program (TSCA section 203 and the AHERA schools rule) if EPA determines that the State has established and is implementing or intends to implement a program of asbestos inspection and management that contains requirements that are at least as stringent as those in the Agency's asbestos-in-schools program. A State seeking a waiver must submit its request to the EPA Region in which the State is located.

C. When Did Illinois Submit its Request for a Waiver and How is EPA Proposing to Respond?

On December 20, 2004, Illinois Governor Rod Blagojevich, submitted to Bharat Mathur, Acting Regional Administrator, EPA Region V, a letter requesting a full waiver of the requirements of EPA's asbestos-in-schools program. After reviewing this initial submittal, EPA Region V did request further information from Illinois by letter dated January 20, 2005. Illinois then responded by submitting the additional requested information on February 25, 2005. This supplemental information was subsequently received by EPA Region V on March 3, 2005, and then further discussed and clarified during two conference calls held with Illinois Department of Public Health (IDPH) staff on March 15 and April 8, 2005.

EPA is hereby issuing a notice in the **Federal Register** announcing receipt of the complete Illinois waiver request and an opportunity for comment and public hearing, and making the request and the supporting documentation available in the public record for this notice. The Agency is also describing the information submitted by Illinois and the Agency's preliminary determinations as to how the waiver

request meets the criteria for the grant of a waiver.

D. What was EPA's Determination with Regard to the Completeness of Illinois' Waiver Request?

The Illinois waiver request has been deemed complete by EPA and contains the following:

1. A copy of the Illinois provisions that include its program of asbestos inspection and management in schools. These consist of: The Illinois Asbestos Abatement Act (105 ILCS), the Illinois Commercial and Public Building Asbestos Abatement Act (225 ILCS), the Department of Public Health Act (20 ILCS 2305), and 77 Illinois Administrative Code, section 855, all of which are administered by the IDPH.

2. The names of the Illinois agencies responsible for administering and enforcing the requirements of the waiver (including the IDPH, the Illinois Attorney General's Office and the Illinois State's Attorney's Offices), the names and job titles of responsible officials in those agencies, and telephone numbers where these officials can be reached. The responsible officials from the IDPH include Gary Flentge, Chief of the Division of Environmental Health and Kent Cook, Manager of the Asbestos Program (telephone: (217) 785-5830). The responsible official from the Illinois Attorney General's Office is Matthew J. Dunn, Chief, Environmental Enforcement/Asbestos Litigation Division (telephone: (312) 814-2521). The responsible officials from the State's Attorney's Offices include the current State's Attorney's from each of Illinois' Counties.

3. Detailed reasons, supporting papers, and the rationale for concluding that Illinois' asbestos inspection and management program provisions are at least as stringent as the requirements of the AHERA Schools Rule (40 CFR part 763, subpart E). This information can be found in the December 17, 2004 assurance letter from Anne Murphy, Chief Counsel to IDPH, which forms an integral part of Illinois' waiver application. This letter states that "Illinois' law is at least as stringent as the federal AHERA regulations in their entirety," because "the AHERA regulations are adopted directly by the Illinois Asbestos Abatement Act (105 ILCS 105)," and have been incorporated by reference into the IDPH asbestos regulations found at 77 IAC 855.

4. A discussion of any special situations, problems, and needs pertaining to the waiver request accompanied by an explanation of how Illinois intends to handle them. This information can be found in the

supplemental information submitted by Illinois in response to the request from EPA Region V. In its reply, IDPH has explained and clarified that if any of its regulatory language were ever to be found in conflict with the language of the federal AHERA regulations, that "... IDPH would ensure that the minimum federal regulations found in AHERA were enforced and at the same time ensure that the health of the public is protected." This approach ensures that the Illinois Program will remain "at least as stringent as" the Federal Program as required by 40 CFR 763.98(a).

5. A statement of the resources that Illinois intends to devote to the administration and enforcement of the provisions relating to the waiver request. This statement is found in the supplemental submission made by Illinois which addresses the resources currently available to support an ongoing program. These resources include both monies appropriated by the Legislature and monies deposited in the Illinois School Asbestos Abatement Fund.

6. Copies of Illinois laws and regulations relating to the request, including provisions for assessing criminal and/or civil penalties. Copies of Illinois' asbestos statutes and regulations can be found in Attachment A of the State's original application submittal, and also in a subsequent e-mail from Gary Flentge to Philip King, dated April 8, 2005, which forwarded a copy of Illinois' Department of Public Health Act (20 ILCS 2305/8.1).

7. Assurance from the Governor, the Attorney General, or the legal counsel of the lead agency that the lead agency has the legal authority necessary to carry out the requirements relating to the request. This assurance is found in the letter from Anne Murphy, Chief Counsel for the IDPH, to the Acting EPA Regional Administrator, Bharat Mathur, dated December 17, 2004, which accompanies and forms a part of the original application submission.

E. What are the Criteria for EPA's Grant of the Waiver?

EPA may waive some or all of the requirements of the Agency's asbestos-in-schools program if the Agency determines that Illinois has met the criteria set forth at 40 CFR 763.98. The criteria and EPA's preliminary determinations relating to the grant of the waiver to Illinois are set forth below:

1. Illinois' lead agency and other cooperating agencies have the legal authority necessary to carry out the provisions of asbestos inspection and

management in schools relating to the waiver request.

EPA's Preliminary Determination: EPA has determined preliminarily that the statutory and regulatory provisions of the Illinois Asbestos Abatement Act (105 ILCS), the Illinois Commercial and Public Building Asbestos Abatement Act (225 ILCS), the Department of Public Health Act (20 ILCS 2305), and 77 Illinois Administrative Code, Section 855, give the Illinois Department of Public Health such authority.

2. Illinois' program of asbestos inspection and management in schools and its implementation of the program are or will be at least as stringent as the requirements of the AHERA Schools Rule.

EPA's Preliminary Determination: Since Illinois has adopted the AHERA schools rule by reference in its regulations, EPA has determined that Illinois' program is at least as stringent as EPA's program.

3. Illinois has an enforcement mechanism to allow it to implement the program described in the waiver request.

EPA's Preliminary Determination: EPA has determined preliminarily that the compliance and enforcement provisions of Illinois' asbestos-in-schools program are adequate to run the program. The Director of the Illinois Department of Public Health is empowered under the Commercial and Public Building Asbestos Abatement Act (225 ILCS 207) to "... maintain an action for prosecution, injunction, or other relief or process against any Building/Facility Owner or any other person or unit of local government to enforce and compel compliance with the provisions of this Act, the rules promulgated under it and any order entered for any action under this Act and its rules. A person who violates this Act is guilty of a Class A misdemeanor punishable by a fine of \$1,000 for each day the violation exists in addition to other civil penalties or up to 6 months imprisonment or both a fine and imprisonment." The Director also has authority to inspect all activities regulated by the Act, and can issue stop work orders. In addition, under section 8.1 of the Department of Public Health Act (20 ILCS 2305), the Director may also deem "whoever violates or refuses to obey any rule or regulation of the Department of Public Health to be guilty of a Class A misdemeanor."

4. The lead agency and any cooperating agencies have or will have qualified personnel to carry out the provisions relating to the waiver request.

EPA's Preliminary Determination: EPA has preliminarily determined that the IDPH has qualified personnel to carry out the provisions of the waiver. The existing program staff includes four environmental engineers, one project designer, three full-time support staff, two temporary support staff, and an architect. Oversight is provided by a licensed professional engineer.

5. Illinois will devote adequate resources to the administration and enforcement of the asbestos inspection and management provisions relating to the waiver request.

EPA's Preliminary Determination: EPA has determined preliminarily that Illinois has adequate resources to administer and enforce the provisions of the program. The appropriated funding for the Asbestos Program is \$933,045 for the current State fiscal year ('05). The State also has a current balance of \$612,000 in its Illinois School Asbestos Abatement Fund, and collected \$15,229 in fines during the previous fiscal year ('04).

6. Illinois gives satisfactory assurances that the necessary steps, including specific actions it proposes to take and a time schedule for their accomplishment, will be taken within a reasonable time to conform with criteria numbers 2-4 above.

EPA's Preliminary Determination: For EPA to grant a full waiver to Illinois, the State, as a condition of the grant of the waiver, would need to give a written assurance satisfactory to EPA that, if following the grant of the waiver, any provision of either TSCA section 203 or the AHERA schools rule is changed, the State would, within a reasonable period of time, make appropriate changes, as necessary, to the statutory and regulatory provisions of its asbestos-in-schools program to ensure that the program remains at least as stringent as the EPA asbestos-in-schools program.

In addition, if a waiver is granted and as long as it remains in effect, Illinois, utilizing adequate resources, would need to continue its asbestos-in-schools implementation and enforcement strategy. EPA may evaluate periodically the adequacy of Illinois' program under 40 CFR 763.98, and, under circumstances set forth in the regulation, may, in whole or in part, rescind the waiver if the Agency determines the program to be inadequate.

F. What Recordkeeping and Reporting Burden Approvals Apply to the Illinois Waiver Request?

The recordkeeping and reporting burden associated with waiver requests was approved by the Office of

Management and Budget (OMB) under OMB control number 2070-0091. This document announces the Agency's receipt of the Illinois waiver request and, therefore, imposes no additional burden beyond that covered under existing OMB control number 2070-0091.

III. Materials in the Official Record

The official record, under docket ID number OPPT-2004-0096, contains the Illinois waiver request, and any other supporting or relevant documents.

List of Subjects

Environmental protection, Asbestos, Hazardous substances, Occupational health and safety, Reporting and recordkeeping requirements, Schools.

Dated: June 2, 2005.

Norman Niedergang,

Acting Regional Administrator, Region V.

[FR Doc. 05-11662 Filed 6-13-05; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 05-1620]

Conference Call Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 9, 2005, the Commission released a public notice announcing the June 28, 2005 conference call meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's conference call meeting and agenda.

DATES: Tuesday, June 28, 2005, 2-3 p.m. e.s.t.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5-A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer at (202) 418-1466 or Deborah.Blue@fcc.gov. The fax number is: (202) 418-2345. The TTY number is: (202) 418-0484.

SUPPLEMENTARY INFORMATION: Released: June 9, 2005.

The North American Numbering Council (NANC) has scheduled a meeting to be held by conference call on Tuesday, June 28, 2005, from 2 until 3 p.m. e.s.t. The conference bridge number for domestic participants is 1-800-377-4562 (toll free). The call in number for international participants is 1-816-650-0777 (caller pays). The Chairperson for the call is Robert Atkinson. This meeting is open to members of the general public. Due to limited port space, NANC members and Commission staff will have first priority on the call. The FCC will attempt to accommodate as many participants as possible. Members of the public may join the call as remaining port space permits, or may attend in person at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room 6-B516, Washington, DC 20554. The public may submit written statements to the NANC, which must be received one business day before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received one business day before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, June 28, 2005, 2 p.m. e.s.t.

To discuss the NANC Future of Numbering Working Group's Report on the NANC Change Orders 399 and 400.

Federal Communications Commission.

Regina M. Brown,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 05-11807 Filed 6-13-05; 8:45 am]

BILLING CODE 6712-01-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 July 8, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *Sapelo Bancshares, Inc.*, Darien, Georgia; to become a bank holding

company by acquiring 100 percent of the voting shares of Sapelo National Bank, Darien, Georgia.

Board of Governors of the Federal Reserve System, June 8, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05-11679 Filed 6-13-05; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

BILLING CODE 6750-01-M

TRANSACTIONS GRANTED EARLY TERMINATION - 05/23/2005

<u>TRANS #</u>	<u>ACQUIRING</u>	<u>ACQUIRED</u>	<u>ENTITIES</u>
20050748	Akamai Technologies, Inc.	Speedera Networks, Inc.	Speedera Networks, Inc.
20050916	SemGroup, L.P.	Koch Industries, Inc.	Chemical Petroleum Exchange, Incorporated K.C. Asphalt, LLC KMC Enterprises, Inc. Koch Materials Company Vulcan-Koch Asphalt Marketing, LLC

TRANSACTIONS GRANTED EARLY TERMINATION - 05/24/2005

<u>TRANS #</u>	<u>ACQUIRING</u>	<u>ACQUIRED</u>	<u>ENTITIES</u>
20050792	Reuters Group PLC	J.P. Morgan Chase & Co.	Moneyline Network, Inc. Moneyline Telerate Holdings Inc. Moneyline Telerate International
20050896	ProAssurance Corporation	NCRIC Group, Inc.	NCRIC Group, Inc.
20050925	Spectrum Equity Investors IV, L.P.	Tom T. Gores	A to-be-formed Delaware limited liability company
20050931	Beckman Coulter, Inc.	Agencourt Bioscience Corporation	Agencourt Bioscience Corporation
20050934	Pixelworks, Inc.	Equator Technologies, Inc.	Equator Technologies, Inc.
20050954	Wolseley plc	Adams Building Materials, Inc.	Adams Building Materials, Inc.
20050960	Blue Cross and Blue Shield of Florida, Inc.	Life and Specialty Ventures, LLC	Life and Specialty Ventures, LLC
20050962	Arkansas Blue Cross and Blue Shield, A Mutual Insurance Co.	Life and Specialty Ventures, LLC	Life and Specialty Ventures, LLC
20050963	TPG Partners IV, L.P.	British Vita PLC	British Vita PLC
20050965	Charming Shoppes, Inc.	J.P. Morgan Chase & Co.	Crosstown Traders, Inc.
20050971	Aetna Inc.	Active Health Management, Inc.	Active Health Management, Inc.
20050977	Maverick Tube Corporation	Sr. Carlos Haime Baruch	Advanced Corporation Advance Tubular de Ecuador S.A. Advance Tubular de Venezuela C.A. Consortio Metalurgico Nacional S.A., Tubos del Caribe S.A. Tubulares de Colombia Limitada,
20050980	Hellman & Friedman Capital Partners V, L.P.	DoubleClick Inc.	DoubleClick Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 05/25/2005

<u>TRANS #</u>	<u>ACQUIRING</u>	<u>ACQUIRED</u>	<u>ENTITIES</u>
20050936	O'Reilly Automotive, Inc.	William Z. Lahr Revocable Trust u/a July 20, 1999	Champion Auto Stores, LLC Hines-Bumper to Bumper, LLC Mountain Motor-Bumper to Bumper, LLC W.E. Lahr Company
20050968	Bruckmann, Rosser, Sherrill & Co. II, L.P.	Koninklijke Ahold N.V.	Tops Brands, Inc. Tops Markets, LLC
20050970	Newton Holding, LLC	The Neiman Marcus Group, Inc.	The Neiman Marcus Group, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 05/26/2005

<u>TRANS #</u>	<u>ACQUIRING</u>	<u>ACQUIRED</u>	<u>ENTITIES</u>
20050973	Nautic Partners V, L.P.	Brennan Southwest Trust	Hayes Brake Holding Company, LLC Hayes Brake, LLC Hayes Brake RLP, LLC Hayes Disc Brakes, LLC HB Leasing, LLC

TRANSACTIONS GRANTED EARLY TERMINATION - 05/27/2005

<u>TRANS #</u>	<u>ACQUIRING</u>	<u>ACQUIRED</u>	<u>ENTITIES</u>
20050967	International Business Machines Corporation	Healthlink Incorporated	Healthlink Incorporated
20050981	Minnesota Vikings Football, LLC	B.J. McCombs	Minnesota Vikings Development, LLC Minnesota Vikings Football Club, LLC Minnesota Vikings Ventures, LLC
20050984	Rhone Offshore Partners II L.P.	Jacuzzi Brands, Inc.	Rexair Holdings, Inc.
20050985	ECI Telecom Ltd.	Laurel Networks, Inc.	Laurel Networks, Inc.
20050994	H.I.G. Captial LLC, Inc.	CITIC Group	CitiSteel USA Inc.
20051008	Powerwave Technologies, Inc.	REMEC, Inc.	REMEC, Inc.
20051010	KKR Millennium Fund L.P.	Jazz Pharmaceuticals, Inc.	Jazz Pharmaceuticals, Inc.
20051011	Industrial Growth Partners II, L.P.	CFI Holdings Corp.	CFI Holdings Corp.
20051014	Silver Lake Partners II, L.P.	National Association of Securities Dealers, Inc.	NASDAQ and Norway Acquisition Corp.

TRANSACTIONS GRANTED EARLY TERMINATION - 05/31/2005

<u>TRANS #</u>	<u>ACQUIRING</u>	<u>ACQUIRED</u>	<u>ENTITIES</u>

20050969	Apax Europe V-A, L.P.	Nordic Capital Svenska AB	Molnlycke Health Care AB

TRANSACTIONS GRANTED EARLY TERMINATION - 06/01/2005

<u>TRANS #</u>	<u>ACQUIRING</u>	<u>ACQUIRED</u>	<u>ENTITIES</u>
20050653	Eastman Kodak Company	Creo Inc.	Creo Inc.
20051005	Occidental Petroleum Corporation	EnCap Energy Capital Fund IV, L.P.	NGL Ventures, LLC
20051006	Complete Energy Holdings, LLC	La Paloma Holding Company, LLC	La Paloma Generating Company, LLC
20051009	Warburg Pincus Private Equity VIII, L.P.	ScanSoft, Inc.	ScanSoft, Inc.
20051019	James Ratcliffe	BASF Aktiengesellschaft	BASF Corporation

TRANSACTIONS GRANTED EARLY TERMINATION - 06/02/2005

<u>TRANS #</u>	<u>ACQUIRING</u>	<u>ACQUIRED</u>	<u>ENTITIES</u>
20050079	Occidental Petroleum Corporation	Vulcan Materials Company	Vulcan Chloralkali, LLC
20050950	WellPoint, Inc.	Lumenos, Inc.	Lumenos, Inc.
20051012	L'Oreal S.A.	SkinCeuticals, Inc.	SkinCeuticals, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 06/03/2005

<u>TRANS #</u>	<u>ACQUIRING</u>	<u>ACQUIRED</u>	<u>ENTITIES</u>
20050997	The Bank of New York Company, Inc.	Reuters Group PLC	Lynch, Jones & Ryan, Inc.
20051013	Leonard Blavatnik	BASF Aktiengesellschaft	Basell Finance USA, Inc. Basell N.V.
20051016	Beacon Capital Partners Voting Trust	Wyndham International, Inc.	Wyndham International, Inc.
20051021	Quad-C Partners VI, L.P.	NuSil Corporation	NuSil Investments LLC
20051022	Leonard Blavatnik	Royal Dutch Petroleum Company	Basell Finance USA, Inc. Basell N. V.
20051023	Constable SPV 1 Limited	Cannon Avent Group plc	Cannon Avent Group plc

For Further Information Contact:
Sandra M. Peay, Contact Representative
or Renee Hallman, Case Management
Assistant, Federal Trade Commission,
Premerger Notification Office, Bureau of
Competition, Room H-303, Washington,
DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05-11747 Filed 6-13-05; 8:45 am]

BILLING CODE 6750-01-C

FEDERAL TRADE COMMISSION

[File No. 051 0009]

**Occidental Chemical Company and
Vulcan Materials Company; Analysis of
Agreement Containing Consent Order
To Aid Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment

describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 2, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Occidental Chemical Company, *et al.*, File No. 051 0009," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the

following address: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: consentagreement@ftc.gov.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT: John Warden, Room NJ-6129, (202) 326-2147, or Susan Huber, Room NJ-6115, (202) 326-3331, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent

agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 3, 2005), on the World Wide Web, at <http://www.ftc.gov/os/2005/06/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Occidental Chemical Company ("OxyChem") and Vulcan Materials Company ("Vulcan") (collectively "Respondents"). The Consent Agreement is intended to resolve anticompetitive effects stemming from OxyChem's proposed acquisition of the chemical assets of Vulcan. The Consent Agreement includes a proposed Decision and Order ("Order") which requires Respondents to divest Vulcan's facility in Port Edwards, Wisconsin and assets relating to the research, development, marketing, sales, and production of chemicals produced at the facility including chlorine, caustic soda (sodium hydroxide), KOH (potassium hydroxide), APC (anhydrous potassium carbonate), and hydrochloric acid ("Port Edwards business"). The Order calls for divestiture of the Port Edwards business to ERCO Worldwide ("ERCO") or, in the event the Commission requires rescission of such acquisition, another approved buyer. The Consent Agreement also includes an Order to Maintain Assets, which requires Respondents to preserve the Port Edwards business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement, if finally accepted by the Commission, would settle charges that OxyChem's proposed acquisition of Vulcan's chemical assets may have substantially lessened competition in the markets for KOH, potassium carbonate, and APC. The Commission has reason to believe that OxyChem's proposed acquisition of Vulcan's Port Edwards business would have violated Section 7 of the Clayton

Act and Section 5 of the Federal Trade Commission Act.

II. The Proposed Complaint

According to the Commission's proposed complaint, the relevant product markets in which to analyze the effects of OxyChem's proposed acquisition of Vulcan's chemical assets are the production and sale of KOH, potassium carbonate, and APC. KOH is the raw material for the production of many potassium chemicals, such as potassium permanganate, citrate, acetate, cyanide, benzoate, iodide, and sorbate. The largest end use of KOH is the production of potassium carbonate, commonly known as potash. End uses for potassium carbonate include nutrition supplements for dairy cattle, video glass for television and computer monitors, other specialty glass, potassium silicates, fertilizers, gas processing, industrial intermediaries, photographic development processes, detergents; and food products. Potassium carbonate can be produced in liquid or flake (solid) form. Over 90% of total potcarb production in the United States is of the flake form, known as APC. For most APC customers, liquid potassium carbonate is not an economically viable substitute.

The proposed complaint alleges that the markets for KOH, potcarb, and APC are highly concentrated and that OxyChem and Vulcan have been the primary competitors in these markets for many years and are the only producers of APC in the U.S. As the proposed Complaint describes, customers have relied on the competition between these companies to maintain competitive pricing levels. The proposed complaint alleges that OxyChem's proposed acquisition of Vulcan's chemical assets would reduce competition by eliminating direct competition between these two companies. The proposed complaint further alleges that entry into the relevant markets would not be timely, likely, or sufficient to deter or offset the acquisition's adverse competitive effects.

III. Terms of the Proposed Order

The proposed Order also requires that, within 10 days of OxyChem's acquisition of Vulcan's chemical assets, OxyChem divest the Port Edwards business to ERCO Worldwide (USA) Inc., an indirect subsidiary of Superior Plus, Inc., a Canadian company. The Port Edwards business will become part of ERCO Worldwide, a division of Superior Plus whose parent, Superior Plus Income Fund, is a Canadian income fund. Superior Plus, Inc. has

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

four divisions: Superior Propane; ERCO Worldwide; Winroc; and Superior Energy Management. The market value of the fund is Cdn \$2.5 billion. ERCO's total revenues in 2004 were Cdn \$396 million.

The assets to be divested under the proposed Order include Port Edwards's manufacturing facilities, related transportation assets (including railcars and terminal contracts), raw material supply agreements, and customer contracts. Port Edwards is Vulcan's only manufacturing facility that has the capacity to produce KOH and APC. The divested assets are sufficient to allow ERCO to effectively continue the production and marketing of KOH, APC, HCl, caustic soda, and chlorine at Port Edwards in amounts, and under terms, equivalent to the historical production and sale of these chemicals from the facility.

The Order further provides that if, at the time the Commission makes this Order final, the Commission notifies Respondents that ERCO is not an acceptable acquirer of the Port Edwards business or that the manner in which the divestiture was accomplished is not acceptable, then, the divestiture to ERCO shall be rescinded and within a six-month period, OxyChem shall divest the Port Edwards business to an acquirer acceptable to the Commission. If, following this six month period, the Port Edwards Assets have not been divested, then the Commission may appoint a Divestiture Trustee to divest the assets in a manner acceptable to the Commission.

The proposed Order to Maintain Assets that is also included in the Consent Agreement requires that Respondents maintain the Port Edwards business as a viable and competitive operation until the business is transferred to ERCO or another Commission-approved acquirer. Furthermore, the order contains measures designed to ensure that no material confidential information is exchanged between Respondents and the Port Edwards business (except as otherwise provided in the Order to Maintain Assets) and measures designed to prevent interim harm to competition in the relevant markets pending divestiture.

The proposed Order also provides for the Commission to appoint a Monitor Trustee to oversee OxyChem's compliance with the terms of the order, and in the Order to Maintain Assets, the Commission appoints Richard M. Klein as Monitor Trustee. Mr. Klein has a Ph.D in Inorganic Chemistry and was the President and CEO of Sybron Chemicals from 1979 to 2001. He serves

on the boards of a number of companies and has been appointed by the Commission as Monitor Trustee or Hold Separate Trustee in other FTC matters.

Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully divested the Port Edwards business, Respondents are required to submit a verified written report describing how they are complying, have complied, and intend to comply with the terms of the Order. Further, within thirty (30) days after the date this Order is issued, and annually for ten (10) years on the anniversary of the date this Order is issued, Respondent OxyChem must submit a verified written report to the Commission describing how it is complying, has complied, and intends to comply with the terms of the Order. Finally, within thirty (30) days after the date this Order is issued and annually for two (2) years on the anniversary of the date this Order is issued, Respondent Vulcan shall submit to the Commission a verified written report describing how it has complied, is complying, and will comply with this Order; however, if either Paragraph II.B or Paragraph V of the Order come into effect, Respondent Vulcan shall submit annual reports for five (5) years on the anniversary of the date this Order is issued.

IV. Opportunity for Public Comment

The proposed Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order and Order to Maintain Assets.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement, the proposed Order, or the Order to Maintain Assets, or in any way to modify the terms of the Consent Agreement, the proposed Order, or the Order to Maintain Assets.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05-11746 Filed 6-13-05; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Creutzfeldt-Jakob Disease— Nationwide Education and Communication

Announcement Type: New.
Funding Opportunity Number: AA109.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Letter of Intent Deadline: June 24, 2005.

Application Deadline: July 14, 2005.

I. Funding Opportunity Description

Authority: 42 U.S.C. 247b(k)(2).

Background: Creutzfeldt-Jakob disease (CJD) is an incurable brain disorder that occurs with an incidence of one case per million annually. The majority of patients die within six months of illness onset. The disease causes damage to the brain leaving patients completely dependent on their caregivers for the most basic needs of daily living. In 1996, a variant form of CJD emerged in the United Kingdom, which was causally linked to bovine spongiform encephalopathy (BSE). Over 170 variant CJD cases have been identified worldwide, including one case in the United States.

Purpose: The purpose of this program is to enhance national surveillance for CJD and its emerging variants by (1) facilitating interaction of researchers with family members of CJD patients (2) increasing awareness about CJD and (3) increasing the number of autopsies of suspected CJD cases. This program addresses the "Healthy People 2010" focus area of Infectious Diseases.

Increasing awareness about CJD can be achieved by facilitating dialogue among CJD researchers, family members, and health care professionals. Increasing awareness empowers CJD families to make the appropriate decisions about the care of their loved ones. Learning more about prion diseases through autopsy study of CJD cases would assist in the surveillance of potentially emerging forms of the disease and would facilitate the development of a pre-mortem diagnostic test or treatment for CJD. Increasing autopsy rates is critical because CJD can only be confirmed after an autopsy. Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases (NCID): Protect Americans from infectious diseases.

This announcement is only for non-research activities supported by CDC/ATSDR. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC web site at the following Internet address: <http://www.cdc.gov/od/ads/opspoll1.htm>.

Activities

Awardee activities for this program are as follows:

- Educate family members of CJD patients nationwide by maintaining a toll-free helpline and preparing necessary fact sheets through which family members of CJD patients can obtain guidance and advice from experienced and trained persons about the disease, related infection control issues, the need for autopsy, and necessary care for patients. Assure that personnel managing the helpline have first-hand experience with the disease, its impacts on surviving family members, and sensitivity regarding post-mortem care.

- Sponsor a national conference annually during the project period that would bring together family members and professionals working on CJD. Design the conference to educate families regarding surveillance and treatment of CJD and to facilitate dialogue between researchers working on CJD and family members. These discussions help researchers to gain more knowledge about the social impacts of the disease and exchange ideas on potential areas of research.

- Through the nationwide helpline, fact sheets, national conference, and other educational efforts, increase awareness about the state-of-the art CJD diagnostic services provided free of charge by the National Prion Disease Pathology Surveillance Center, provide guidance on home and post-mortem care for CJD patients, and communicate the importance of the need to conduct autopsy of suspected CJD cases to facilitate surveillance of the disease.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

- Monitor the implementation of program activities.
- Provide input in and support the development of education materials as necessary.
- Monitor the provision of guidance and information support by the applicant.
- Participate in the national conference as needed.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: \$50,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: 1.

Approximate Average Award: \$50,000 per year (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: \$50,000 (This ceiling is for the first 12-month budget period.)

Anticipated Start Date: August 1, 2005.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations and by governments and their agencies, such as:

- Public non-profit organizations
- Private non-profit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local

government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

Special Requirements

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

- Applicants must document eligibility by providing proof of 501(c)(3) status or letters of support in an application appendix.

- This program is not designed or intended to support research, therefore no research will be supported under this cooperative agreement. Any applications proposing research will be considered non-responsive.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

To submit your application electronically, please utilize the forms and instructions posted for this announcement at <http://www.grants.gov>.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770-488-2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: 1
- Font size: 12-point unrounded
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid

jargon

Your LOI must contain the following information:

- Name of the organization
- Previous experience related to the announcement
- Name and contact information for point of contact

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25
- If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- Font size: 12 point unrounded
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, should clearly address the Evaluation Criteria in Section V.1., below, and must include the following items in the order listed: Background and Need, Capacity, Objectives, Operational Plan, Evaluation Plan, Collaborations, Budget and budget justification (budget not included in page limit).

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitae, Resumes, Organizational Charts, Letters of Support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access www.dunandbradstreet.com or call 1-866-705-5711.

For more information, see the CDC Web site at: <http://www.cdc.gov/od/pgo/funding/pubcomm.htm>. If your

application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: June 24, 2005.

CDC requests that you submit an LOI if you intend to apply for this program. Although the LOI will not be evaluated, and does not enter into review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: July 14, 2005.

Explanation of Deadlines: LOIs and Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application form instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO-TIMS staff at: 770-488-2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives.
- Funding provided for conference support may not be used for purchasing meals.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/funding/budgetguide.htm>.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Ermias Belay, M.D., Project Officer, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop A-39, Atlanta, GA 30333, Telephone: 404-639-4655; Fax: 404-639-3838, E-mail: EBelay@cdc.gov.

Application Submission Address

You may submit your application electronically at: <http://www.grants.gov>, OR submit the original and two hard copies of your application by mail or express delivery service to:

Technical Information Management—AA109, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These

measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

Applicant's Operational Plan for This Cooperative Agreement (40 Points)

Is the plan adequate to carry out the proposed objectives? Does the plan thoroughly address all project goals and awardee activities for the entire project period? Is an adequate timeline in place? Does the applicant demonstrate they have working knowledge of or have collaborative experience with the National Prion Disease Pathology Surveillance Center to be able to educate others about the diagnostic services provided by the center? Does the applicant demonstrate ability to organize a successful national conference with a high attendance of family members and CJD researchers?

Applicant Organizational History, Description of Capacity (30 Points)

Does the organization's mission and values emphasize CJD support services for families? Does the applicant demonstrate that the needs of CJD families have been and will remain at the forefront of the organization's priorities? Does the applicant demonstrate a history of implementing programs for CJD families? Does the applicant demonstrate ability to advocate among family members of CJD patients for the need for the more sensitive issue of autopsy and post-mortem care of CJD patients to facilitate surveillance of the disease? Does the applicant provide evidence that suggests they possess the necessary experience, required level of sensitivity, and trust by family members to be able to confidentially advise, educate, and provide support to family members of CJD patients? Does the applicant demonstrate the capacity to create a five-year plan for the services outlined in this program announcement? Does the organization possess the appropriate community relationships needed to effectively render CJD support services?

Methods (15 Points)

Are the proposed methods feasible for dealing with CJD families? Does the methodology include a family centered approach? Are these methods sensitive to the emotional state of CJD families? To what extent will these methods accomplish the program goals?

Applicant's Staffing and Management (10 Points)

Can the organization demonstrate that its front line/help line staff has the

appropriate understanding of CJD family needs to speak with families on a regular basis? Do the staff members have previous experience working with CJD families? As described, will the staff have enough experience in communicating with the general public such as family members of CJD patients to be able to accomplish the program goals?

Evaluation Plan and Measures of Effectiveness (5 Points)

Does the applicant provide measures of effectiveness as described in the opening paragraph of this Section V.1., above such that effective "outcome" evaluation can be accomplished? Does the applicant propose a plan to effectively evaluate the following measures?

- Success in creating clear and effective educational materials.
- Success in the organization of a national conference with the participation of CJD researchers and family members.
- The number of family members successfully counseled using the toll-free helpline.

Budget and Justification (Reviewed, but not scored)

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCID. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. The objective review panel will consist of CDC employees from outside the funding center who will evaluate the technical merit of applications for the purpose of advising the awarding official. As part of the review process, all applications will:

- Undergo review by a primary, secondary and tertiary reviewer using only the Evaluation Criteria included in this Program Announcement, above.
- Receive a vote of approval or disapproval and if approved, a score based on the points for the Evaluation Criteria, above.
- Receive a second programmatic level review by Division senior staff based on rank order of scores.

VI. Award Administration Information

Anticipated Award Date: August 1, 2005.

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient's fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions
- AR-15 Proof of Non-Profit Status
- AR-20 Conference Support
- AR-23 States and Faith-Based Organizations
- AR-25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
 - a. Current Budget Period Activities Objectives.
 - b. Current Budget Period Financial Progress.
 - c. New Budget Period Program Proposed Activity Objectives.
 - d. Budget.
 - e. Measures of Effectiveness.
 - f. Additional Requested Information.
2. Financial status report and annual progress report, no more than 90 days after the end of each budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2700.

For program technical assistance, contact: Ermias Belay, M.D., Project Officer, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop A-39, Atlanta, GA 30333, Telephone: 404-639-4655; Fax: 404-639-3838, E-mail: EBelay@cdc.gov.

For financial, grants management, or budget assistance, contact: Sharron P. Orum, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2716, E-mail: SOrum@cdc.gov.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: <http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements."

Dated: May 27, 2005

William P. Nichols,

Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.

[FR Doc. 05-11693 Filed 6-13-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Reinstatement of a Previously Approved Information Collection; Comments Request

ACTION: 30-Day notice of information collection under review: Medical Certification for Disability Exceptions, Form N-648.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for

review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 4, 2005, at 70 FR 17110. The USCIS received one comment on this information collection. The commenter stated that an instrument of consent should be added to the Form N-648. The USCIS reviewed the Form N-648 and concluded that the current form contains a section for consent purposes.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(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 the agency's 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement of a previously approved collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form N-648, U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract:* Primary: Individuals or Households. These medical certifications will be used to support an applicant's claim to an exception of the literacy and history/government knowledge requirements found in section 312 of the Immigration and

Nationality Act. These certifications which are executed by licensed health care providers are needed to support the applicant's claim of an exception to this naturalization requirement.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To respond:* 20,000 responses at two (2) hours per response.

(6) *An estimate of the Total Public Burden (in Hours) Associated With the Collection:* 40,000 and annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272-8377.

Dated: June 9, 2005.

Richard A. Sloan,

Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.

[FR Doc. 05-11685 Filed 6-13-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Reinstatement of a Previously Approved Information Collection; Comments Request

ACTION: 30-day notice of information collection under review: Extension of Request for the Return of Original Document(s), Form G-884.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** on April 4, 2005, at 70 FR 17111, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow for an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2005.

This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following points:

(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 the agency's 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement of a previously approved information collection.

(2) *Title of the Form/Collection:* Request for the Return of Original Document(s).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G-884. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 7,500 respondents. The amount of estimated time required for the average respondent to respond is: 15 minutes (.25 hours).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,875 hours annually.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272-8377.

Dated: June 9, 2005.

Richard A. Sloan,

*Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.*
[FR Doc. 05-11686 Filed 6-13-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review; Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition; Form I-600, I-600A.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This information collection was previously published in the **Federal Register** on April 4, 2005 at 70 FR 17109, allowed for a 60-day public comment period. The U.S. Citizenship and Immigration Services (USCIS) did not receive any comments on this information collection. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2005. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 the agency's 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-600 and I-600A. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form issued by the USCIS to determine immigrant eligibility and advance processing of orphans.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,000 responses at 30 minutes (.5) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272-8377.

Dated: June 8, 2005.

Richard A. Sloan,

*Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.*
[FR Doc. 05-11687 Filed 6-13-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Notice of Appeal of Decision under Section 210 or 245A of the Immigration and Nationality Act; Form I-694.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of

Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 4, 2005 at 70 FR 17109, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(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 the agencies 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Appeal of Decision under Section 210 or 245A of the Immigration and Nationality Act.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form I-694, U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will be Asked or Required to Respond, as Well as a Brief Abstract:* Primary: Individuals or Households. This information collection will be used by the USCIS in considering appeals of denials of temporary and permanent residence status by legalization applicants and special agricultural workers, under sections 210 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 1,192 responses at 30 minutes (.5) hours per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 596 annual burden hours.

If you have additional comments suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272-8377.

Dated: June 8, 2005.

Richard A. Sloan,

*Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.*
[FR Doc. 05-11688 Filed 6-13-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act; Form I-612.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 4, 2005 at 70 FR 17108, allowed for a 60-day public comment period; no comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until, July 14, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 the agency's 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Forms I-612. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract:* Primary: Individuals or Households. Section 212(e) of the Immigration and Nationality Act provides for a waiver of the foreign residence requirement in certain instances. This information will be used by the USCIS to determine eligibility for a waiver.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* 1,300 respondents at 20 minutes (.333 hours) per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 432 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529.

Dated: May 27, 2005.

Richard A. Sloan,

Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.
[FR Doc. 05-11689 Filed 6-13-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Baggage and Personal Effects of Detained Aliens; Form I-43.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 4, 2005 at 70 FR 17108, allowed for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2005. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 the agency's 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Baggage and Personal Effects of Detained Aliens.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form I-43. U.S. Immigration and Customs Enforcement (ICE).

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract:* Primary: Individuals or Households. The form is used by the arresting officer to ensure that the alien is afforded a reasonable opportunity to collect his or her property. The ICE also uses this form to protect the government from possible fraudulent claims.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* 600,000 responses at one minute (.17) per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 10,200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272-8377.

Dated: May 26, 2005.

Richard A. Sloan,

Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.
[FR Doc. 05-11690 Filed 6-13-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Guam Visa Waiver Agreement; Form I-760.

The Department of Homeland Security, U.S. Customs and Border Protection (CBP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 1, 2005 at 70 FR 16832, allowed for a 60-day public comment period. No public

comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(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 the agency's 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Guam Visa Waiver Agreement.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form I-760, U.S. Customs and Border Protection.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract:* Primary: Business or other for-profit. Pub. L. 99-396 provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into and stay on Guam as a visitor under certain conditions. This form is the agreement between carrier of the alien and the United States.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* 5 responses at 15 minutes (.25 hours) per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 1 annual burden hour.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272-8377.

Dated: May 26, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.
[FR Doc. 05-11691 Filed 6-13-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Waiver of Rights, Privileges, Exemptions and Immunities; Form I-508.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 4, 2005 at 70 FR 17110, allowed for a 60-day public comment period. The USCIS did not receive any comments from the public on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(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 the agencies 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Waiver of Rights, Privileges, Exemptions, and Immunities.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* Form I-508. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract:* Primary: Individuals or Households. This form is used by the USCIS to determine eligibility of an applicant to retain the status of alien lawfully admitted to the United States for permanent residence.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* 1,800 responses at 5 (.083) minutes per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* 150 annual burden hours.

If you have any comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272-8377.

Dated: May 25, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.
[FR Doc. 05-11692 Filed 6-13-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Florida Scrub-Jay Resulting From Construction of a Multi-Home Subdivision in Marion County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Southern Multicapital Corporation (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended (U.S.C. 1531 *et seq.*). The Applicant anticipates destroying about 93 acres of occupied Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) habitat in Section 21, Township 16 South, Range 21 East, Marion County, Florida. Habitat destruction would be expected due to vegetation clearing and the subsequent construction of infrastructure and single-family homes. Up to four scrub-jay families could be taken as a result of the Applicant's proposed actions.

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the project to the scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We announce the availability of the ITP application, HCP, and a draft environmental assessment. Copies of the application, HCP, and environmental assessment may be obtained by making a request to the Southeast Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the ITP application, HCP, and environmental assessment should be sent to the Service's Southeast Regional Office (see **ADDRESSES**) and should be received on or before August 15, 2005.

ADDRESSES: Persons wishing to review the application, HCP, and environmental assessment may obtain a copy by writing the Service's Southeast Regional Office at the address below. Please reference permit number TE098004-0 in such requests.

Documents will also be available for public inspection by appointment during normal business hours either at the Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216-0912 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (see **ADDRESSES** above), telephone: 404/679-7313, facsimile: 404/679-7081; or Mr.

Mike Jennings, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES** above), telephone: 904/232-2580.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE098004-0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the Internet to david_dell@fws.gov. Please submit comments over the internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (well-drained, sandy soil habitats supporting a growth of oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in central Florida has been exacerbated by agricultural land conversions and urban

growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils that previously supported scrub-jay habitat. Based on existing soils data, much of the current scrub-jay habitat of central Florida occurs in what was once the coastal sand dunes created over the millennia due to rising and falling oceans. These ancient dunes are most prevalent from southern Highlands County north to Marion County. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded, due to interruption of the natural fire regime that is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Residential construction would take place within Section 21, Township 16 South, Range 21 East, Marion County, Florida. Surveys conducted by the Applicant indicated that scrub-jays occupied 93 of the 218 acres proposed to be developed as a residential community. The clearing of vegetation for infrastructure and home construction would destroy feeding, breeding, and sheltering habitat of the scrub-jay.

The Applicant has not proposed to minimize impacts to scrub-jays at the proposed construction site because small, on-site scrub-jay preserves may actually harm scrub-jays by concentrating birds into an area where predators may attack them, increasing their susceptibility to collisions with automobiles, and increasing the incidence of competition with other more urban-adapted bird species. Instead of protecting habitat within the future residential community, the Applicant is proposing to acquire 158 acres, of which 102 acres is considered suitable for scrub-jays. The U.S. Forest Service has tentatively agreed to accept fee title and management responsibilities for the 158 acres which would be acquired by the Applicant. Although the Forest Service must work through processes and procedures prior to accepting the land donation and agreeing to restoration and management of the tract, it does not anticipate any issues to arise that would prevent this from happening. In addition, the acquisition and subsequent transfer of fee title would allow the U.S. Forest Service access to an additional 87 acres it currently owns but has been unable to manage due to restricted access.

In combination with the acquisition of the 158 acres described above, the

Applicant proposes to contribute \$366,758 to the Florida Scrub-jay Conservation Fund (Fund), administered by the National Fish and Wildlife Foundation (NFWF). Through an agreement between the Service and NFWF, scrub-jay mitigation funds deposited into the Fund are available for the conservation of Florida scrub-jays. Conservation efforts may include habitat acquisition, habitat restoration and habitat management.

The Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. If it is determined that those requirements are met, the ITP will be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: May 24, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05-11705 Filed 6-13-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 5-Year Review of 25 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 5-year review of the ringed map turtle (*Graptemys oculifera*), flatwoods salamander (*Ambystoma cingulatum*), watercress darter (*Etheostoma nuchale*), pygmy sculpin (*Cottus pygmaeus*), southern acornshell (*Epiplatys othcaloogensis*), ovate clubshell (*Pleurobema perovatum*), southern

clubshell (*Pleurobema decisum*), upland combshell (*Epioblasma metastriata*), triangular kidneyshell (*Ptychobranthus greenii*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), orange-nacre mucket (*Lampsilis perovalis*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), fine-lined pocketbook (*Lampsilis altalis*), lacy elimia (*Elimia crenatella*), cylindrical lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyrium showalteri*), painted rocksnail (*Leptoxis taeniata*), plicate rocksnail (*Leptoxis plicata*), round rocksnail (*Leptoxis ampla*), tulotoma snail (*Tulotoma magnifica*), Alabama cave shrimp (*Palaemonias alabamiae*), Alabama leather flower (*Clematis socialis*), and Morefield's leather flower (*Clematis morefieldii*) under the Endangered Species Act of 1973 (Act). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12) is accurate. The 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow us adequate time to conduct this review, information submitted for our consideration must be received on or before August 15, 2005. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Information submitted on the Alabama cave shrimp should be sent to the Field Supervisor, Daphne Field Office, U.S. Fish and Wildlife Service, 1208-B Main Street, Daphne, Alabama, 36526. Information about the remaining 24 species should be sent to the Field Supervisor, Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Information received in response to this notice of review will be available for public inspection by appointment, during normal business hours, at the same addresses.

FOR FURTHER INFORMATION CONTACT: Jeff Powell at the Daphne, Alabama, address above for the Alabama cave shrimp (telephone, 251/441-5858) and Paul Hartfield at the above Jackson, Mississippi, address for the remaining 24 species (telephone, 601/321-1125).

SUPPLEMENTARY INFORMATION: Under the Act, the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants) (collectively referred to as the List).

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the following species that are currently federally listed as threatened: Ringed map turtle, flatwoods salamander, pygmy sculpin, Alabama moccasinshell, orange-nacre mucket, fine-lined pocketbook, lacy elimia, painted rocksnail, round rocksnail; and the following species federally listed as endangered: watercress darter, southern acornshell, ovate clubshell, southern clubshell, upland combshell, triangular kidneyshell, Coosa moccasinshell, dark pigtoe, southern pigtoe, cylindrical lioplax, flat pebblesnail, plicate rocksnail, tulotoma snail, Alabama cave shrimp, Alabama leather flower, and Morefield's leather flower.

The List is found in 50 CFR 17.11 (wildlife) and 17.12 (plants) and is also available on our Internet site at <http://endangered.fws.gov/wildlife.html#Species>. Amendments to the List through final rules are published in the **Federal Register**.

What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. A 5-year review will consider the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?"); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Specific Information Requested for the Acornshell and Upland Combshell

We are especially interested in information on surviving populations of the southern acornshell and upland combshell. We specifically request any recent information regarding the collection of live or fresh dead shells of these species, as well as information on their location, numbers, and/or habitats.

Specific Information Requested for the Alabama Cave Shrimp

We are especially interested in information on surviving populations of Alabama cave shrimp. We specifically request any recent information regarding the collection and/or observation of these animals, as well as information on their location, numbers, and/or habitats. We are also interested in recent groundwater studies that address hydrologic connectivity and/or water quality, water levels, or water-aging analyses conducted in the vicinity of Bobcat, Shelta, Brazelton, Glover, and Hering caves in Madison County, Alabama.

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is

endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find that there is new information concerning any of these 25 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then these species will remain on the List under their current status.

Public Solicitation of New Information

We request any new information concerning the status of these 25 species. See "What information is considered in the review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Our practice is to make comments, including names/home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the supporting record, which we will honor to the extent allowable by law. There may be circumstances in which we may withhold from the supporting record a respondent's identity, as allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments, however, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 13, 2005.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. 05-11704 Filed 6-13-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-960-1420-BJ-TRST] ES-053572, Group No. 163, Wisconsin]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs. The lands we surveyed are:

Fourth Principal Meridian, Wisconsin

T. 51 N., R. 4 W.

The plat of survey represents the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the survey of the subdivision of section 6, Township 51 North, Range 4 West, Fourth Principal Meridian, Wisconsin, and was accepted June 7, 2005. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: June 7, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05-11697 Filed 6-13-05; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-957-05-1910-BJ-5RK4]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of Plats of Survey, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plats of surveys of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Indian Affairs and are necessary for the managements of lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, Township 2 North, Range 2 East, Wind River Meridian, Wyoming, was accepted June 8, 2005.

Copies of the preceding described plat and field notes are available to the public at \$1.10 each.

Dated: June 8, 2005.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 05-11699 Filed 6-13-05; 8:45 am]

BILLING CODE 4467-22-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010-0103).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR Part 202—ROYALTIES, Subpart J—Gas Production From Indian Leases, and Part 206—PRODUCT VALUATION, Subpart B—

Indian Oil, and Subpart E—Indian Gas (Forms MMS-4109, Gas Processing Allowance Summary Report; MMS-4110, Oil Transportation Allowance Report; MMS-4295, Gas Transportation Allowance Report; MMS-4410, Accounting for Comparison [Dual Accounting]; and MMS-4411, Safety Net Report).” The title of this ICR clarifies the regulatory language we are covering under 30 CFR parts 202 and 206, for Indian oil and gas leases, and incorporates relevant portions of six previous ICRs. The six ICRs now consolidated into this ICR were previously titled:

- 1010-0061: 30 CFR Part 206, Subpart B—Indian Oil, § 206.55—Determination of Transportation Allowances (Form MMS-4110, Oil Transportation Allowance Report);
- 1010-0075: 30 CFR Part 206, Subpart E—Indian Gas, § 206.178—How do I determine a transportation allowance? (Form MMS-4295, Gas Transportation Allowance Report), and § 206.180—How do I determine an actual processing allowance? (Form MMS-4109, Gas Processing Allowance Summary Report);
- 1010-0095: 30 CFR Part 206—Product Valuation, Subpart B—Indian Oil, § 206.54; Subpart C—Federal Oil, § 206.109; Subpart D—Federal Gas, §§ 206.156 and 206.158; and Subpart E—Indian Gas, § 206.177 (Form MMS-4393, Request to Exceed Regulatory Allowance Limitation). Only Indian oil and gas citations and burden hours are covered in this ICR. Form MMS-4393 is also used for Federal oil and gas citations and is retained with ICR 1010-0136 (expires May 31, 2006), where most of the burden hours are incurred;
- 1010-0103: 30 CFR Part 206, Subpart E—Indian Gas (Form MMS-4411, Safety Net Report);
- 1010-0104: 30 CFR Part 206, Subpart E—Indian Gas, §§ 206.172, 206.173, and 206.176 (Form MMS-4410, Accounting for Comparison [Dual Accounting]); and
- 1010-0138: 30 CFR Part 206, Subpart B, Establishing Oil Value on Royalty Due on Indian Leases.

DATES: Submit written comments on or before August 15, 2005.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A-614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at mrm.comments@mms.gov. Include

the title of the information collection and the OMB control number in the “Attention” line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231-3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231-3211, FAX (303) 231-3781, or e-mail sharron.gebhardt@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: “30 CFR Part 202—ROYALTIES, Subpart J—Gas Production From Indian Leases, and Part 206—PRODUCT VALUATION, Subpart B—Indian Oil, and Subpart E—Indian Gas (Forms MMS-4109, Gas Processing Allowance Summary Report; MMS-4110, Oil Transportation Allowance Report; MMS-4295, Gas Transportation Allowance Report; MMS-4410, Accounting for Comparison [Dual Accounting]; and MMS-4411, Safety Net Report).”

OMB Control Number: 1010-0103.

Bureau Form Number: Forms MMS-4109, MMS-4110, MMS-4295, MMS-4410, and MMS-4411.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department’s trust responsibility for Indian lands.

Applicable Citations

Applicable citations of the laws pertaining to mineral leases on Indian lands include 25 U.S.C. 396d (Chapter 12—Lease, Sale or Surrender of Allotted or Unallotted Lands); 25 U.S.C. 2103 (Indian Mineral Development Act of 1982); and Public Law 97-451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]). The CFR citations we are covering in this ICR are 30 CFR part 202, subpart J; and part 206, subparts B and E.

Background

When a company or an individual enters into a lease to explore, develop,

produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information MMS collects includes data necessary to ensure that the royalties are paid appropriately.

Regulations at 30 CFR part 202, subpart J, govern royalties on gas production from Indian leases. Regulations at 30 CFR part 206, subparts B and E, govern the valuation of oil and gas produced from leases on Indian lands. Indian tribes and individual Indian mineral owners receive all royalties generated from their lands. Determining product valuation is essential to ensure that Indian tribes and individual Indian mineral owners receive payment on the full value of the minerals removed from their lands. Tribal representatives have expressed their concern that the Secretary continue to fulfill all trust and fiduciary duties and ensure that the correct royalty is received from Indian lands. Failure to collect the data described in this information collection could result in the undervaluation of leased minerals on Indian lands.

Indian Oil

Regulations at 30 CFR part 206, subpart B, govern the valuation for royalty purposes of oil produced from Indian oil and gas leases (tribal and allotted) and must be consistent with mineral leasing laws, other applicable laws, and lease terms.

Regulations at 30 CFR 206.52 explain how lessees must determine the value of oil produced from Indian oil and gas leases. Generally, the regulations provide that lessees determine the value of oil, based upon the gross proceeds under an arm’s-length contract, a series of benchmarks under a non-arm’s-length contract, and major portion analysis. These oil valuation methods are eligible for applicable transportation allowances.

Transportation Allowances

Under certain circumstances, the regulations authorize lessees to deduct from royalty payments the reasonable

actual costs of transporting the royalty portion of produced minerals from the lease to a sales point not in the immediate lease area. The MMS verifies transportation allowances during the product valuation verification to determine if the lessee reported and paid the proper royalty amount.

The MMS and tribal personnel use the information collected on Form MMS-4110, Oil Transportation Allowance Report, to evaluate whether the transportation allowances reported and claimed by lessees are within regulatory allowance limitations. The regulations establish a limit on transportation allowance deductions for oil at 50 percent of the value of the oil at the point of sale. To receive a transportation deduction, lessees must submit Form MMS-4110 before or in the same month that they report the transportation allowance on Form MMS-2014, Report of Sales and Royalty Remittance (OMB Control Number 1010-0140, expiration date October 31, 2006). After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS-4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period.

Request To Exceed Regulatory Allowance Limitations for Oil Transportation

The MMS may approve an oil transportation allowance in excess of 50 percent upon proper application from the lessee. To request permission to exceed a regulatory allowance limit, lessees must submit a letter to MMS explaining why a higher allowance limit is necessary and provide supporting documentation, including a completed Form MMS-4393, Request to Exceed Regulatory Allowance Limitation. This form provides MMS with the data necessary to make a decision whether to approve or deny the request and track deductions on royalty reports. Data reported on the form is also subject to subsequent audit and adjustment.

Indian Gas

Regulations at 30 CFR part 206, subpart E, govern the valuation for royalty purposes of natural gas produced from Indian oil and gas leases. The regulations apply to all gas production from Indian oil and gas leases (tribal and allotted), except leases on the Osage Indian Reservation.

Safety Net Reporting

The safety net calculation establishes the minimum value, for royalty purposes, of natural gas production from Indian oil and gas leases. This reporting requirement ensures that Indian lessors receive all royalties due and aids MMS compliance efforts.

The regulations require lessees to submit Form MMS-4411, Safety Net Report, when gas production from an Indian oil or gas lease is sold beyond the first index pricing point. The lessee submits safety net prices, for the previous calendar year, to MMS annually (by June 30) using this form.

Dual Accounting

Most Indian leases contain the requirement to perform accounting for comparison (dual accounting) for gas produced from the lease. Lessees must elect to perform actual dual accounting as defined in 30 CFR 206.176 or alternative dual accounting as defined in 30 CFR 206.173.

According to 30 CFR 206.176, dual accounting is defined as the greater of the following two values:

- (1) The value of gas prior to processing, less any applicable allowances, or
- (2) The combined value of residue gas and gas plant products resulting from processing the gas, less any applicable allowances, plus any drip condensate associated with the processed gas recovered downstream of the point of royalty settlement, without resorting to processing, less applicable allowances.

Lessees use Form MMS-4410, Accounting for Comparison [Dual Accounting], to certify that dual accounting is not required on an Indian lease or to make an election for actual or alternative dual accounting for Indian leases.

Form MMS-4410 (Part A), Certification for Not Performing Dual Accounting, requires lessees to identify the MMS-designated areas where the leases are located and provide specific justification for not performing dual accounting. Part A is a one-time notification, until any changes occur in gas disposition. Part A lists the following acceptable reasons for not performing dual accounting: (1) The lease terms do not require dual accounting; (2) none of the gas from the lease is ever processed; (3) gas has a Btu content of 1000 Btu's per cubic foot or less at lease's facility measurement point(s); (4) none of the gas from the lease is processed until after gas flows into a pipeline with an index located in an index zone; and (5) none of the gas from the lease is processed until after

gas flows into a mainline pipeline not located in an index zone.

Form MMS-4410 (Part B), Election to Perform Actual Dual Accounting or Alternative Dual Accounting, allows MMS to collect the lessee's elections to perform actual dual accounting or alternative dual accounting. A lessee makes an election by checking either the actual or alternative dual accounting box for each MMS-designated area where its leases are located. Part B also includes the lessee's lease prefixes within each MMS-designated area to assist lessees in making the appropriate election. The election to perform actual or alternative dual accounting applies to all of a lessee's Indian leases in each MMS-designated area. The first election to use the alternative dual accounting is effective from the time of election through the end of the following calendar year. Thereafter, each election to use the alternative dual accounting methodology must remain in effect for 2 calendar years. However, lessees may return to the actual dual accounting methodology only at the beginning of the next election period or with written approval from MMS and the tribal lessors for tribal leases, and from MMS for Indian allotted leases in the MMS-designated area (30 CFR 206.173(a)).

Transportation Allowances

Under certain circumstances, lessees are authorized to deduct from royalty payments the reasonable actual costs of transporting the royalty portion of produced minerals from the lease to a processing or sales point not in the immediate lease area. Transportation allowances are part of the product valuation process MMS uses to determine if the lessee is reporting and paying the proper royalty amount.

The MMS and tribal personnel use the information collected on Form MMS-4295, Gas Transportation Allowance Report, to evaluate whether the non-arm's-length or no contract transportation allowances reported and claimed by lessees are reasonable, actual costs and are within regulatory allowance limitations. To take a non-arm's-length transportation deduction, a lessee must submit Form MMS-4295 within 3 months after the end of the 12-month period to which the allowance applies. The regulations establish a limit on transportation allowance deductions for gas at 50 percent of the value of the gas at the point of sale.

Request To Exceed Regulatory Allowance Limitation for Gas Transportation

The MMS may approve a gas transportation allowance in excess of 50

percent upon proper application from the lessee. To request permission to exceed a regulatory allowance limit, lessees must submit a letter to MMS explaining why a higher allowance limit is necessary and provide supporting documentation, including a completed Form MMS-4393, Request to Exceed Regulatory Allowance Limitation. This form provides MMS with the data necessary to make a decision whether to approve or deny the request and track deductions on royalty reports. Data reported on the form is also subject to subsequent audit and adjustment.

Processing Allowances

When gas is processed for the recovery of gas plant products, lessees may claim a processing allowance. The MMS normally accepts the cost as stated in the lessee's arm's-length processing contract as being representative of the cost of the processing allowance. In those instances where gas is being processed through a lessee-owned plant, the lessee must base processing costs on the actual plant operating and maintenance expenses, depreciation, and a reasonable return on investment. The allowance is expressed as a cost per

unit of individual gas plant products. Lessees may take processing allowances as a deduction from royalty payments.

The MMS and tribal personnel use the information collected on Form MMS-4109, Gas Processing Allowance Summary Report, to evaluate whether the non-arm's-length or no contract processing allowances reported and claimed by lessees are reasonable, actual costs and are within regulatory allowance limitations. To take a non-arm's-length processing deduction, lessees must submit Form MMS-4109 within 3 months after the end of the 12-month period to which the allowance applies. The regulations establish a limit of 66 2/3 percent of the value of each gas plant product as an allowable gas processing deduction.

Summary

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments to Indian tribes and individual Indian mineral owners.

Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected.

In some cases the requirement to respond is mandatory, such as reporting royalty values or declaring the type of dual accounting election the lessee chooses to perform. In other cases, it is voluntary, such as asking permission to exceed a transportation allowance limit. For example, a lessee can request, but is not required to apply for, a transportation allowance deduction in excess of the regulatory limits. However, if no request is made, the transportation limitation is set by regulation.

Frequency of Response: Annually, monthly, and on occasion.

Estimated Number and Description of Respondents: 125 Indian lessees/lessors.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,285 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR	Reporting and recordkeeping requirements ¹	Hour burden	Average number of annual responses	Annual burden hours

202—ROYALTIES

Subpart J.—Gas Production From Indian Leases

202.551(c)	How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)? * * *	1	1	1
	(c) You and all other persons paying royalties on the lease may ask MMS for permission * * *			

206—PRODUCT VALUATION

Subpart B—Indian Oil

206.52(b)(1)(i) and (iii), (b)(2), and (d).	Valuation standards (b)(1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length. * * * (iii) * * * When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value. * * * (b)(2) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the oil. (d) Any Indian lessee will make available, upon request to the authorized MMS or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field or area or from nearby fields or areas.	PRODUCE RECORDS The Office of Regulatory Affairs (ORA) determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.52(e)(2)	Valuation standards	20	1	20

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirements ¹	Hour burden	Average number of annual responses	Annual burden hours
206.52(g)	(e)(2) A lessee shall notify MMS if it has determined value under paragraph (c)(4) or (c)(5) of this section. * * * The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. * * * Valuation standards	40	1	40
206.54(b)(2)	(g) The lessee may request a value determination from MMS. * * * The lessee shall submit all available data relevant to its proposal. * * * Transportation allowances—general	4.25	1	4.25
206.55(a)(1)(i)	(b)(2) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. * * * An application for exception (using Form MMS-4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation necessary for MMS to make a determination. * * *	Burden covered under § 206.55(c)(1)(i) and (iii).		
206.55(a)(2)(i)	Determination of transportation allowances	Burden covered under § 206.55(a)(3).		
206.55(a)(2)(ii)	(a) Arm's-length transportation contracts (1)(i) * * * Before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4110 (and Schedule 1), Oil Transportation Allowance Report * * *	20	1	20
206.55(a)(3)	Determination of transportation allowances	40	1	40
206.55(b)(1)	(a) Arm's-length transportation contracts (2)(i) * * * Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty-bearing without MMS approval. (2)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. * * *	Burden covered under § 206.55(c)(2)(i), and (c)(2)(iii).		
206.55(b)(1)	Determination of transportation allowances	Burden covered under OMB Control Number 1010-0140 (expires 10/31/2006). Burden covered under § 210.52.		
206.55(b)(2)(iv)	(a) Arm's-length transportation contracts. (3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. * * * The lessee shall submit all available data to support its proposal. * * *	20	1	20
206.55(b)(2)(iv)(A)	Determination of transportation allowances	20	1	20
206.55(b)(3)(i)	(b) Non-arm's-length or no contract. (2)(iv) * * * After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS.	40	1	40
206.55(b)(3)(ii)	Determination of transportation allowances	20	1	20
206.55(b)(4)	(b) Non-arm's-length or no contract. (3)(i) * * * Except as provided in this paragraph, the lessee may not take an allowance for transporting lease production which is not royalty bearing without MMS approval. (3)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. * * *	20	1	20

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirements ¹	Hour burden	Average number of annual responses	Annual burden hours
	(b) Non-arm's-length or no contract. (4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. * * * The lessee shall submit all available data to support its proposal. * * *			
206.55(b)(5)	Determination of transportation allowances	20	1	20
	(b) Non-arm's-length or no contract. (5) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. * * *			
206.55(c)(1)(i)	Determination of transportation allowances	4	3	12
	(c) Reporting requirements. (1) Arm's-length contracts. (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS-4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined under an arm's-length contract, is reported on Form MMS-2014, Report of Sales and Royalty Remittance. * * *			
206.55(c)(1)(iii)	Determination of transportation allowances	4	3	12
	(c) Reporting requirements. ....	.....	.....	.....
	(1) <i>Arm's-length contracts.</i> (iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS-4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).			
206.55(c)(1)(iv)	Determination of transportation allowances	PRODUCE RECORDS The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
	(c) Reporting requirements. (1) <i>Arm's-length contracts.</i> (iv) MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.			
206.55(c)(2)(i)	Determination of transportation allowances	6	3	18
	(c) Reporting requirements. (2) <i>Non-arm's-length or no contract.</i> (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS-4100 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS-2014, * * * The initial report may be based upon estimated costs.			
206.55(c)(2)(iii)	Determination of transportation allowances	6	3	18
	(c) Reporting requirements. (2) <i>Non-arm's-length or no contract.</i> (iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS-4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS-4110 its estimated costs for the next calendar year. * * * MMS must receive the Form MMS-4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).			
206.55(c)(2)(iv)	Determination of transportation allowances	Burden covered under § 206.55(c)(2)(i).		
	(c) Reporting requirements. (2) Non-arm's-length or no contract. (iv) For new transportation facilities or arrangements, the lessee's initial Form MMS-4100 shall include estimates of the allowable oil transportation costs for the applicable period. * * *			
206.55(c)(2)(v)	Determination of transportation allowances	Burden covered under § 206.55(c)(2)(i).		
	(c) Reporting requirements. (2) Non-arm's-length or no contract. (v) * * * only those allowances that have been approved by MMS in writing * * *			

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirements ¹	Hour burden	Average number of annual responses	Annual burden hours
206.55(c)(2)(vi)	Determination of transportation allowances (c) Reporting requirements. (2) Non-arm's-length or no contract. (vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS-4410. The data shall be provided within a reasonable period of time, as determined by MMS	PRODUCE RECORDS The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.55(c)(4)(v) and (e)(2).	Determination of transportation allowances (c) Reporting requirements. (4) Transportation allowances must be reported as a separate line item on Form MMS-2014 * * *	Burden covered under OMB Control Number 1010-0140 (expires 10/31/2006). Burden covered under § 210.52.		
	(e) Adjustments. (2) For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS-2014 to reflect actual costs * * *			

206—PRODUCT VALUATION
Subpart E—Indian Gas

206.172(b)(1)(ii)	How do I value gas produced from leases in an index zone? (b) Valuing residue gas and gas before processing. (1)(ii) Gas production that you certify on Form MMS-4410, * * * is not processed before it flows into a pipeline with an index but which may be processed later * * * (Part A of Form MMS-4410)	4	25	100
206.172(e)(6)(i) and (iii).	How do I value gas produced from leases in an index zone? (e) Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point. (6)(i) You must report the safety net price for each index zone to MMS on Form MMS-4411, Safety Net Report, no later than June 30 following each calendar year; * * * (iii) MMS may order you to amend your safety net price within one year from the date your Form MMS-4411 is due or is filed, whichever is later. * * *	3	20	60
206.172(b)(1)(ii)	How do I value gas produced from leases in an index zone? (e) Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point. (6)(ii) You must pay and report on Form MMS-2014 additional royalties due no later than June 30 following each calendar year * * *	Burden covered under OMB Control Number 1010-0140 (expires 10/31/2006). Burden covered under § 210.52.		
206.172(f)(1)(ii), (f)(2), and (f)(3).	How do I value gas produced from leases in an index zone? (f) Excluding some or all tribal leases from valuation under this section. (1) An Indian tribe may ask MMS to exclude some or all of its leases from valuation under this section * * * (ii) If an Indian tribe requests exclusion from an index zone for less than all of its leases, MMS will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation. (2) An Indian tribe may ask MMS to terminate exclusion of its leases from valuation under this section. * * *. (3) The Indian tribe's request to MMS under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution. * * *	40	1	40
206.173(a)(1)	How do I calculate the alternative methodology for dual accounting? (a) Electing a dual accounting method. (1) * * * You may elect to perform the dual accounting calculation according to either § 206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting). (Part B of Form MMS-4410)	2	35	70
206.173(a)(1)	How do I calculate the alternative methodology for dual accounting? (a) electing a dual accounting method. (2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each MMS-designated area. * * *	Burden covered under § 206.173(a)(1).		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirements ¹	Hour burden	Average number of annual responses	Annual burden hours
206.174(a)(4)(ii)	(Part B of Form MMS-4410) How do I value gas production when an index-based method cannot be used? (a) Situations in which on index-based method cannot be used. (4)(ii) If the major portion value is higher, you must submit an amended Form MMS-2014 to MMS by the due date specified in the written notice from MMS of the major portion value. * * *	Burden covered under OMB Control Number 1010-0140 (expires 10/31/2006). Burden covered under § 210.52.		
206.174(b)(1)(i) and (iii); (b)(2); (d)(2)	How do I value gas production when an index-based methods cannot be used? (b) Arm's-length contracts. (1)(i) You have the burden of demonstrating that your contract is arm's-length. * * * (iii) * * * In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your value. * * * (b)(2) MMS may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant produce. (d) Supporting data (2) You must make all such data available upon request to the authorized MMS or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons. * * *	PRODUCE RECORDS The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.174(f)	How do I value gas production when an index-based method cannot be used? (f) Value guidance. You may ask MMS for guidance in determining value. You may propose a valuation methods to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. * * *	40	1	40
206.175(d)(4)	How do I determine quantities and qualities of production for computing royalties? (d)(4) You may request MMS approval of other methods for determining the quality of residue gas and gas plant products allocable to each lease. * * *	20	1	20
206.176(b)	How do I perform accounting for comparison? (b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 206.173 instead of the provision in paragraph (a) of this section.	Burden covered under § 206.173.(a)(1).		
206.176(c)	(Part B of Form MMS-4410) How do I perform accounting for comparison? (c) * * * If you do not perform dual accounting, you must certify to MMS that gas follows into such a pipeline before it is processed. (Part A of Form MMS-4410)	Burden covered under § 206.172(b)(1)(ii).		

Transportation Allowances

206.177(c)(2) and (c)(3).	What general requirements regarding transportation allowances apply to me? (c)(2) If you ask MMS, MMS may approve a transportation allowance deduction in excess of the limitation in paragraph (c)(1) of this section. * * *	4.25	1	4.25
	(3) Your application for exception (using Form MMS-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination.	4.25	1	4.25
206.178(a)(1)(i)	How do I determine a transportation allowance? (a) Determining a transportation allowance under an arm's-length contract. (1)(i) * * * You are required to submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your report which claims the allowance on Form MMS-2014.	1	50	50

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirements ¹	Hour burden	Average number of annual responses	Annual burden hours
206.178(a)(1)(iii)	How do I determine a transportation allowance? (a) Determining a transportation allowance under an arm's-length contract (1)(iii) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties * * *. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your transportation costs.	PRODUCE RECORDS The ORA determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
206.178(a)(2)(i) and (ii).	How do I determine a transportation allowance? (a) Determining a transportation allowance under an arm's-length contract. (2)(i) * * * you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without MMS approval, or without lessor approval on tribal leases. (ii) As an alternative to paragraph (a)(2)(i), you may propose to MMS a cost allocation method based on the values of the products transported.* * *	20	1	20
206.178(a)(3)(i) and (ii).	How do I determine a transportation allowance? (a) Determining a transportation allowance under an arm's-length contract. (3)(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to MMS. * * * (ii) You are required to submit all relevant data to support your allocation proposal. * * *	40	1	40
206.178(b)(1)(ii)	How do I determine a transportation allowance? (b) Determining a transportation allowance under a non-arm's-length contract or no contract. (1)(ii) * * * You must submit the actual cost information to support the allowance to MMS on Form MMS-4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies.* * *	15	7	105
206.178(b)(2)(iv)	How do I determine a transportation allowance? (b) Determining a transportation allowance under a non-arm's-length contract or no contract. (2)(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. * * * you may not later elect to change to the other alternative without MMS approval.	20	1	20
206.178(b)(2)(iv)(A) ...	How do I determine a transportation allowance? (b) Determining a transportation allowance under a non-arm's-length contract or no contract. (2)(iv)(A) * * * Once you make an election, you may not change methods without MMS approval. * * *	20	1	20
206.178(b)(3)(i)	How do I determine a transportation allowance? (b) Determining a transportation allowance under a non-arm's-length contract or no contract. (3)(i) * * * Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without MMS approval.	40	1	40
206.178(b)(3)(ii)	How do I determine a transportation allowance? (b) Determining a transportation allowance under a non-arm's-length contract or no contract. (3)(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported. * * *	20	1	20
206.178 (b)(5)	How do I determine a transportation allowance? (b) Determining a transportation allowance under a non-arm's-length contract or no contract. (5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS. * * * You are required to submit all relevant data to support your proposal. * * *	40	1	40

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirements ¹	Hour burden	Average number of annual responses	Annual burden hours
206.178 (d)(1)	How do I determine a transportation allowance? (d) Reporting your transportation allowance. (1) If MMS requests, you must submit all data used to determine your transportation allowance. * * *	PRODUCE RECORDS The ORA determined that the audit process is not covered by the PRA because MMS staff asks nonstandard questions to resolve exceptions. Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52.		
206.178 (d)(2), (e), and (f)(1).	How do I determine a transportation allowance? (d) Reporting your allowance. (2) You must report transportation allowances as a separate line item on Form MMS–2014. * * *			
	(e) Adjusting incorrect allowances. If for any month the transportation allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to report and pay additional royalties due, plus interest computed under 30 CFR 218.54 from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due. * * * (f) Determining allowable costs for transportation allowances. * * * (1) Firm demand charges paid to pipelines. * * * You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period.			
Processing Allowances				
206.180 (a)(1)(i)	How do I determine an actual processing allowance? (a) Determining a processing allowance if you have an arm's-length processing contract. (1)(i) * * * You have the burden of demonstrating that your contract is arm's-length. You are required to submit to MMS a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your first report that deducts the allowance on the Form MMS–2014.	1	30	30
206.180 (a)(1)(iii)	How do I determine an actual processing allowance? (a) Determining a processing allowance if you have an arm's-length processing contract. (1)(iii) If MMS exceptions. determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties * * *. In these circumstances, MMS will notify you and give you an opportunity to provide written information justifying your processing costs.	PRODUCE RECORDS The ORA determined that the audit process is not covered by the PRA because MMS staff asks nonstandard questions to resolve exceptions.		
206.180 (a)(3)	How do I determine an actual processing allowance? (a) Determining a processing allowance if you have an arm's-length processing contract. (3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to MMS. * * * You are required to submit all relevant data to support your proposal. * * *	40	1	40
206.180 (b)(1)(ii)	How do I determine an actual processing allowance? (b) Determining a processing allowance if you have a non-arm's-length contract or no contract. (1)(ii) * * * You must submit the actual cost information to support the allowance to MMS on Form MMS–4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies. * * *	20	5	100
206.180 (b)(2)(iv)	How do I determine an actual processing allowance? (b) Determining a processing allowance if you have a non-arm's-length contract or no contract. (2)(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment. * * * you may not later elect to change to the other alternative without MMS approval.	20	1	20
206.180 (b)(2)(iv)(A) ..	How do I determine an actual processing allowance? (b) Determining a processing allowance if you have a non-arm's-length contract or no contract.	20	1	20

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirements ¹	Hour burden	Average number of annual responses	Annual burden hours
206.180 (b)(3)	(2)(iv)(A) * * * Once you make an election, you may not change methods without MMS approval. * * * How do I determine an actual processing allowance? (b) Determining a processing allowance if you have a non-arm's-length contract or no contract. (3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative.	20	1	20
206.180 (c)(1)	How do I determine an actual processing allowance? (c) Reporting your processing allowance. (1) If MMS requests, you must submit all data used to determine your processing allowance. * * *	PRODUCE RECORDS The ORA determined that the audit process is not covered by the PRA because MMS staff asks nonstandard questions to resolve exceptions. Burden covered under OMB Control Number 1010–0140 (expires 10/31/2006). Burden covered under § 210.52.		
206.180 (c)(2) and (d)	How do I determine an actual processing allowance? (c) Reporting your processing allowance. (2) You must report gas processing allowances as a separate line item on the Form MMS–2014. * * * (d) Adjusting incorrect processing allowances. If for any month the gas processing allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to pay additional royalties, plus interest computed under 30 CFR 218.54 from the first day of the first month you deducted a processing allowance until the date you pay the royalties due. * * *			
206.181(c)	How do I establish processing costs for dual accounting purposes when I do not process the gas? (c) A proposed comparable processing fee submitted to either the tribe and MMS (for tribal leases) or MMS (for allotted leases) with your supporting documentation submitted to MMS. If MMS does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the MMS Director under 30 CFR part 290.	40	1	40
Total Burden .....	.....	.....	212	² 1,285

¹ Recordkeeping burden hours for §§ 206.52(e)(1) and 206.174(d) will be covered under ICR 1010–0140 (expires October 31, 2006) because they apply to Form MMS–2014, Report of Sales and Royalty Remittance.

² Total estimated annual burden hours = 1,284.50, which we rounded up to 1,285.

Estimated Annual Reporting and Recordkeeping “Non-hour Cost” Burden: We have identified no “non-hour” cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency “* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.” Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the

information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting “non-hour cost” burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring,

sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.

Public Comment Policy: We will post all comments in response to this notice on our Web site at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm. We also will make copies of the comments available for public review, including names and

addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: May 9, 2005.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 05-11682 Filed 6-13-05; 8:45 am]

BILLING CODE 4310-MR-P

18th St., 13th St., 16th Ave. Wynnton Rd., Columbus, 05000622

Mississippi

Wilkinson County

Mosely—Woods House, 1461 Bell Rd., Yazoo City, 05000623

Missouri

Jackson County

Kansas City Title and Trust Building, 927 Walnut St., Kansas City, 05000624

North Dakota

Mercer County

St. Paul's Lutheran Church, 4474 1st NW., Hazen, 05000625

South Dakota

Day County

First National Bank Building, 611 Main St., Webster, 05000626

Deuel County

Herrick Barn, 0.5 mi NW of Jct. Deuel Cty Hwy 310 and SD 101, Gary, 05000628

McPherson County

Leola Post Office, 741 Sherman St., Leola, 05000627

[FR Doc. 05-11676 Filed 6-13-05; 8:45 am]

BILLING CODE 4312-51-P

construction castings (both heavy and light) from Brazil and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on October 1, 2004 (69 FR 58952) and determined on January 4, 2005 that it would conduct expedited reviews (70 FR 7967).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on June 7, 2005. The views of the Commission are contained in USITC Publication 3781 (June, 2005), entitled Certain Iron Construction Castings from Brazil, Canada, and China: Investigation Nos. 701-TA-249 and 731-TA-262, 263, and 265 (Second Review).

By order of the Commission.

Dated: Issued: June 8, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-11715 Filed 6-13-05; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 14, 2005. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by June 29, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

Georgia

Muscogee County

Wynnton Village Historic District, Roughly bounded by Wildwood Ave., Forest Ave.,

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-249 and 731-TA-262, 263, and 265 (Second Review)]

Certain Iron Construction Castings From Brazil, Canada, and China

Determinations

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty order on heavy iron construction castings from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determines that renovation of the antidumping duty order on heavy iron construction castings from Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines that revocation of the antidumping duty orders on iron

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 483, "Registration Certificate—in vitro Testing with Byproduct Material Under General License".

2. *Current OMB approval number:* 3150-0038.

3. *How often the collection is required:* There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the Commission within 30

days after the effective date of such change.

4. *Who is required or asked to report:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units of byproduct material in certain *in vitro* clinical or laboratory tests.

5. *The estimated number of annual respondents:* 364 (104 NRC licensees and 260 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 42 hours (12 hours NRC licensees and 30 hours Agreement State licensees).

7. *Abstract:* Section 31.11 of 10 CFR establishes a general license authorizing any physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation therefrom to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

Submit, by August 15, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear

Regulatory Commission, T-5 F53, Washington, DC 20555-0001, by telephone at 301-415-7233, or by Internet electronic mail to INFOCOLLECTS@NRC.GOV.

Dated at Rockville, Maryland, this 8th day of June 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5-3064 Filed 6-13-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-361 and 50-362]

Southern California Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF-10 and NPF-15, issued to Southern California Edison Company (SCE or the licensee), for operation of the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3 located in San Diego County, California.

The proposed amendment would lower the allowable values for dropout and pickup of the degraded voltage function. The amendment request was submitted on May 27, 2005, on an exigent basis because the need for a license amendment to change the degraded voltage function was not recognized by the licensee or the NRC staff until recently, and the licensee requests approval of the proposed amendment by July 1, 2005, to allow implementation of the amendment before the expected high summer load period.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration.

Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in

the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed change revises the Technical Specification (TS) Surveillance Requirement (SR) 3.3.7.a allowable values of the Degraded Voltage Function. This proposed change will allow Southern California Edison (SCE) to re-establish 218 kV as the minimum voltage on the offsite transmission grid necessary to support operability of the immediate access offsite power source (also referred to as the normal preferred power source[]). This will be accomplished by lowering the dropout and pickup settings, including allowable values for dropout and pickup of the degraded voltage protection relays. Following approval of this proposed change, the 4.16 kV Class 1E buses would be capable of remaining on the normal preferred power source at or above a grid voltage of 218 kV while protecting all Class 1E equipment from degraded grid conditions.

The degraded voltage protection circuits are designed to protect electrical equipment against the effects of degraded voltage on the offsite transmission networks. Therefore, these circuits are generally not considered to be accident initiators. However, spurious actuation of the degraded voltage protection relays could result in the loss of the preferred power source (offsite source of alternating current (AC) power). The proposed change lowers the allowable values for both dropout and pickup for the degraded voltage protection relays. This results in an increase in operating margin and a lower probability of spurious actuation of these degraded voltage signals. Therefore, there is no increase in the probability of a Loss of Offsite Power (preferred power source) as a result of this proposed change.

The safety function of the degraded voltage protection circuits is to ensure the operability of Class 1E equipment. SCE has performed calculations that demonstrate that operation in accordance with this proposed change will not result in operation of plant equipment at degraded voltages.

Therefore, there is no increase in the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed allowable values of the degraded voltage relays will provide an acceptable level of protection for plant equipment.

This proposed change affects only the voltage settings of the degraded voltage protection relays. There is no other change to the degraded voltage function. There are no physical modifications necessary to the degraded voltage protection relays. There are no changes to the actions performed by the relays following actuation. Therefore, there are no new failure modes or effects introduced by this proposed change.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed degraded voltage protection schemes are designed to ensure that plant equipment will not operate at a degraded voltage. The proposed degraded voltage allowable values will not affect the existing protection criterion for plant equipment. This maintains the existing margin of safety for plant equipment.

Therefore, there is no significant reduction in the margin of safety as a result of the proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or

shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the

Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to Nicolas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 2005–3502, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated May 27, 2005, which

is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site <http://www.nrc.gov/reading-rm.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 7th day of June 2005.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–3065 Filed 6–13–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on June 28, 2005. The topic of discussion will be “Update to Medical Event Criteria Definition.” During this discussion, an ACMUI subcommittee will forward to the full ACMUI its recommendation(s) regarding revision of the medical event criteria definition in 10 CFR part 35, “Medical Use of Byproduct Material,” as this definition applies to medical events involving permanent implant brachytherapy. NRC staff is seeking the ACMUI’s recommendations on this issue, as well as any recommendations on communicating associated risks to the public.

DATES: The teleconference meeting will be held on Tuesday, June 28, 2005, from 1 p.m. to 3 p.m., eastern daylight time.

Public Participation: Any member of the public who wishes to participate in the teleconference discussion may contact Angela R. McIntosh using the contact information below.

FOR FURTHER INFORMATION CONTACT:

Angela R. McIntosh, telephone (301) 415–5030; e-mail arm@nrc.gov of the

Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela McIntosh, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, Washington, DC 20555–0001. Hard copy submittals must be postmarked by June 20. Electronic submittals must be submitted by June 24, 2005. Any submittal must pertain to the topic on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC’s web site (<http://www.nrc.gov>) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about March 18, 2005. Minutes of the meeting will be available on or about July 12, 2005.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission’s regulations in Title 10, U.S. Code of Federal Regulations, part 7.

Dated: June 8, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E5–3062 Filed 6–13–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Agency Holding the Meetings: Nuclear Regulatory Commission.

DATE: Weeks of June 13, 20, 27, July 4, 11, 18, 2005.

PLACE: Commissioners’ Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TOO BE CONSIDERED:

Week of June 13, 2005

There are no meetings scheduled for the Week of June 13, 2005.

Week of June 20, 2005—Tentative

Monday, June 20, 2005

- 3 p.m. Affirmation Session (Public Meeting)
- Yankee Atomic Electric Co. (Yankee Nuclear Power Station), Licensee's and NRC Staff's appeal of LBP-04-27 (Tentative)
 - Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72-22-ISFSI (Tentative)
 - U.S. Army (Jefferson Proving Ground Site) (Possession-only license for Depleted Uranium munitions)
 - Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), Commission sua sponte review of the Licensing Board's March 10, 2005 final decision on security contention (Tentative)

Week of June 27, 2005—Tentative

Tuesday, June 28, 2005

- 9:30 a.m. Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Corenthis Kelley, 301-415-7380)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Wednesday, June 29, 2005

- 9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

Week of July 4, 2005—Tentative

There are no meetings scheduled for the Week of July 4, 2005.

Week of July 11, 2005—Tentative

There are no meetings scheduled for the Week of July 11, 2005.

Week of July 18, 2005—Tentative

There are no meeting scheduled for the Week of July 18, 2005.

*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: Michelle Schroll, (301) 415-1662.

* * * * *

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: June 9, 2005.

R. Michelle Schroll,
Office of the Secretary.

[FR Doc. 05-11789 Filed 6-10-05; 10:55 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51796; File No. SR-Amex-2005-037]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to When Floor Official Approval for a Transaction in a High-Priced Security Is Necessary

June 7, 2005.

On April 4, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change amending its Rule 154, Commentary .08 to require Amex floor official approval for a transaction in a stock at a price of \$20 or more a share only when the trade is to be made at the greater of 1% or two dollars away from the last previous sale, and making a conforming amendment to its Rule 119, governing indications, openings, and reopenings. On April 20, 2005, Amex submitted Amendment No. 1 to the proposal.³ The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on

May 3, 2005.⁴ The Commission did not receive any comments on the proposed rule change.

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.⁵ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of the Amex 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 Commission believes that the proposal will help enhance the efficient processing of orders on the Exchange floor by reducing the need for floor official involvement in the normal course of trading of higher priced securities. The impact of the proposed rule change is that, for very high-priced stocks that trade at more than \$200 per share,⁷ the next trade may be up to 1% away from the previous sale, without requiring floor official approval.⁸ The Commission believes that permitting trades to be effected at the greater of 1% or two dollars away from the last previous sale is a moderate adjustment relative to other price moves allowed under Rule 154, Commentary .08 and

⁴ Securities Exchange Act Release No. 51621 (April 27, 2005), 70 FR 22930.

⁵ In approving the proposed rule change, 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).

⁶ 15 U.S.C. 78f(b)(5).

⁷ In its proposal, the Exchange stated that examples of such high-priced securities include NVR, Inc. (ticker symbol: NVR), whose last sale on March 22, 2005 was \$795.50 and Seaboard Corporation (ticker symbol: SEB), whose last sale on March 22, 2005 was \$1,124.00.

⁸ Amex Rule 154, Commentary .08 places limitations on the amount a stock may trade away from its previous sale. Depending upon the price of the stock, Commentary .08 allows a stock to trade up to 50 cents, one dollar, or two dollars away from its previous sale. For high-priced stocks trading at more than \$20 per share, Commentary .08 currently limits members from effecting trades at more than two dollars away from the previous sale. Specialists who wish to effect trades outside the foregoing limit have been required to obtain the prior approval of an Amex floor official. Rule 154, Commentary .08 currently provides that, for stocks trading at \$10 or more (but less than \$20) per share, the next trade may execute at no more than one dollar away from the last previous sale (which allows for a minimum of just over 5% and a maximum of just under 10% away from the last previous sale). For stocks trading at less than \$10 per share, the next trade may execute at no more than 50 cents away from the last previous sale (which allows for a minimum just over 5% and, theoretically, a maximum of just under 5000% away from the last previous sale).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Amex made minor, non-substantive changes to the text of the proposal and a conforming amendment to Amex Rule 119.

appropriate in maintaining adequate trade-to-trade price continuity.

The Commission likewise finds that the proposed conforming change to Amex Rule 119, which governs indications, openings, and reopenings, is consistent with the Act. As amended, Amex Rule 119(3)(a)(iii) will provide that a "significant order imbalance" is one which results in a reopening at a price change constituting the greater of 1% or two dollars from the last previous sale for stocks that trade at \$20 or more, thus limiting the frequency of trading halts and improving the efficient handling of orders in very high-priced stocks on the Exchange floor.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Amex-2005-037) and Amendment No. 1 thereto be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-3060 Filed 6-13-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51749; File No. SR-CBOE-2005-31]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereof Relating to Transaction Fees in Options on the Russell 2000 Index

May 26, 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 20, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On May 17, 2005, the CBOE filed Amendment No. 1 to the proposed rule change.³ The CBOE has

designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act,⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule relating to transaction fees in options on the Russell 2000 Index ("RUT"). Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

CHICAGO BOARD OPTIONS EXCHANGE, INC. FEES SCHEDULE [MARCH 2] **APRIL 20, 2005**

1. OPTIONS TRANSACTION FEES

(1)(3)(4)(7): PER CONTRACT
EQUITY OPTIONS (13):

I.—VIII. Unchanged.

QQQQ and SPDR OPTIONS:

I.—VI. Unchanged.

INDEX OPTIONS (includes Dow Jones
DIAMONDS, OEF and other ETF and
HOLDERS options):

I. CUSTOMER (2):

- S&P 100, PREMIUM > or = \$1—\$.35
- S&P 100, PREMIUM < \$1—\$.20
- MNX and NDX—\$.15
- RUT and REDUCED VALUE
RUSSELL 2000—\$.15
- ETF and HOLDERS options (except
DIA)—\$.15
- OTHER INDEXES, PREMIUM > OR =
\$1—\$.45
- OTHER INDEXES, PREMIUM < \$1—
\$.25

II. MARKET-MAKER AND DPM—
EXCLUDING DOW JONES PRODUCTS
(10)—\$.24

MARKET-MAKER—DOW JONES
PRODUCTS (10)—\$.34

III. MEMBER FIRM PROPRIETARY:
(11)

- FACILITATION OF CUSTOMER
ORDER, MNX and NDX—\$.24
- FACILITATION OF CUSTOMER
ORDER, OTHER INDEXES—\$.20

is April 20, 2005, and the effective date of the amendment is May 17, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 17, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

- NON-FACILITATION ORDER—\$.24
- IV. BROKER-DEALER (EXCLUDING
THE PRODUCTS BELOW) INDEX
CUSTOMER RATES

- ETF, HOLDERS, RUT and REDUCED
VALUE RUSSELL 2000, PREMIUM >
or = \$1—\$.45
- ETF, HOLDERS, RUT and REDUCED
VALUE RUSSELL 2000, PREMIUM <
\$1—\$.25
- MNX and NDX—\$.25

V. NON-MEMBER MARKET MAKER:

- S&P 100 (including OEF), PREMIUM
> or = \$1—\$.37
- S&P 100 (including OEF), PREMIUM
< \$1—\$.22
- OTHER INDEXES, PREMIUM > or =
\$1—\$.47
- OTHER INDEXES, PREMIUM < \$1—
\$.27

VI. MNX and NDX LICENSE FEE
(15)—\$.10

VII. RUT DPM and MARKET MAKER
LICENSE FEE (Russell 2000 cash settled
index) (12)—\$[.40].10

VIII. LINKAGE ORDERS (8)(15):

- S&P 100 (OEF), PREMIUM > or = \$1—
\$.35
- S&P 100 (OEF), PREMIUM < \$1—\$.20
- OTHER INDEXES, PREMIUM > OR =
\$1—\$.45
- OTHER INDEXES, PREMIUM < \$1—
\$.25

2. MARKET-MAKER, e-DPM & DPM
MARKETING FEE (in option classes in
which a DPM has been appointed)(6)
Unchanged.

3. FLOOR BROKERAGE FEE (1)(5):
Unchanged.

4. RAES ACCESS FEE (RETAIL
AUTOMATIC EXECUTION SYSTEM)
(1)(4): Unchanged.

Notes: (1)—(11) Unchanged.

(12) The RUT License [Transaction]
Fee applies to all RUT contracts traded
by the DPM and other Market-Makers.
[The RUT DPM shall be assessed for any
shortfall between the proceeds of the
RUT License Fee and the Exchange's
license obligation to Russell.]

(13)—(15) Unchanged.

5.—21. Unchanged.

Remainder of Fee Schedule—
Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made a few technical corrections to the purpose section and rule text of the proposed rule change and added a sentence to the purpose section to clarify the reason for the proposed reduction in the license fee. The effective date of the original proposed rule change

in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to reduce public customer transaction fees and the license fee assessed to the Designated Primary Market-Maker ("DPM") and market-makers in options on the RUT.

Specifically, the Exchange proposes to reduce public customer transaction fees to \$.15 per contract for transactions in RUT options. Currently, RUT customer transaction fees are \$.45 per contract if the premium is greater than or equal to \$1 and \$.25 per contract if the premium is less than \$1. The Exchange believes this proposed fee reduction will help the Exchange compete more effectively for order flow in the RUT product.

The Exchange also proposes to reduce from \$.40 per contract to \$.10 per contract the license fee that is currently assessed on all DPM and market-maker transactions in RUT options ("RUT License Fee"). The RUT License Fee is assessed by the Exchange to help it recoup the license fees the Exchange pays to the Frank Russell Company ("Russell") for its license to trade the RUT product.⁶ The Exchange recently renegotiated its license agreement with Russell. The license fees owed to Russell have been lowered in conjunction with the renegotiated agreement. As a result, the Exchange has determined to reduce the amount of the RUT License Fee as well as eliminate the requirement that the RUT DPM make up any shortfall between the proceeds of the RUT License Fee and the Exchange's license obligation to Russell.

The Exchange intends to implement these fee changes on May 1, 2005.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4)⁸ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁰

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.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-CBOE-2005-31 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-CBOE-2005-31. 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 CBOE. 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-CBOE-2005-31 and should be submitted on or before July 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-3063 Filed 6-13-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51795; File No. SR-PCX-2005-67]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Exchange Fees and Charges

June 7, 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 May 6, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁶ See Securities Exchange Act Release No. 49601 (April 22, 2004), 69 FR 23836 (April 30, 2004) (SR-CBOE-2004-19).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ See *supra* note 3.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its Schedule of Fees and Charges in order to modify the list of eligible strategies that apply to Option Strategy Executions retroactive to January 1, 2005. The text of the proposed rule change is available on the PCX's Web site (<http://www.pacificex.com>), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in 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 a separate rule filing, SR-PCX-2005-65,³ the PCX proposed to modify the list of strategies presently included in the fee that applies to Option Strategy Executions to add two strategies: (1) short interest spreads and (2) merger spreads. That rule filing is prospective. The purpose of this rule filing is to make one of these same changes retroactive to January 1, 2005.

In SR-PCX-2005-65, the PCX added to its strategy fee cap a strategy used to capture short stock interest. The "short stock interest spread" is defined as a spread that uses two deep in the money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position.⁴

Because the short stock interest spread transactions are generally executed by professionals whose profit margins are generally narrow, the Exchange proposes to cap the transaction fees associated with such executions at \$1,000 per strategy

execution with a monthly cap of \$50,000 per initiating firm.

The PCX seeks to make this fee change retroactive because short stock interest spreads have been executed by customers of the PCX with the understanding, based on conversations with Exchange staff, that these strategies were included in a group of strategies that already qualified for reduced rates and fees under the previously approved Option Strategy Execution rate plan. The PCX is applying to make this fee change retroactive to January 1, 2005 so that the Exchange may make adjustments to the accounts of all customers that may have executed short interest spreads from that date forward based on their understanding that the fees for such transactions were capped. The Exchange believes that by retroactively lowering these fees, the Exchange will not only be correcting customers accounts for previously executed trades but will be able to continue to attract liquidity by accommodating these transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁶ in particular, in that it provides for the equitable allocation of dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2005-67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2005-67 and should be submitted on or before July 5, 2005.

³ See Securities Exchange Act Release No. 51787 (June 6, 2005).

⁴ In SR-PCX-2005-65, the PCX also added merger spreads to the strategy fee cap rule, but PCX is not seeking to make that change retroactive and so merger spreads are not a part of this filing.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05-11680 Filed 6-13-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51791; File No. SR-PCX-2005-22]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Use of a Third Party to Maintain a Member's Books and Records

June 6, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 under the Act,² notice is hereby given that on May 18, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below. These Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PCX Rule 9.17 and PCX Equities, Inc. ("PCXE") Rule 9.17 to include a provision requiring OTP Holders, OTP Firms, and ETP Holders (collectively, "Holders") to provide the Exchange with a copy of the written undertaking required to be filed with the Commission pursuant to Rule 17a-4(i) under the Act when a third party maintains the Holder's books and records.

The text of the proposed rule change is available on the PCX's Internet Web site (<http://www.pacificex.com>), at the principal office of the PCX, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed

rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend PCX Rule 9.17 and PCXE Rule 9.17 to require a Holder to provide the PCX with a copy of the written undertaking required to be filed with the Commission pursuant to Rule 17a-4(i) under the Act when an outside service bureau maintains the Holder's books and records. Rules 17a-3 and 17a-4 under the Act set forth various provisions that require members of a national securities exchange to make, keep current, and preserve certain books and records. In addition, paragraph (i) of Rule 17a-4 specifies that if such records are prepared or maintained by an outside service bureau, depository, bank, or other recordkeeping service on behalf of the member, such outside entity must file with the Commission a written undertaking, signed by a duly authorized person, specifying that the records prepared or maintained for the member are the property of the member, that the records are subject to examination by the Commission or its designee, and that copies of the records shall be promptly furnished upon request to the Commission or its designee.

Currently, PCX Rule 9.17 and PCXE Rule 9.17 provide that OTP Holders, OTP Firms, and ETP Holders shall make and retain all the books and records prescribed by the bylaws and rules of the Exchange, the rules and regulations of the Commission, and any other rules and regulations to which the Holder is subject. Such books and records must be retained for periods as prescribed and shall be made available for inspection by the Exchange. The Exchange proposes to add a provision to PCX Rule 9.17 and PCXE Rule 9.17 to require that if such books and records are prepared or maintained by an outside service bureau, depository, bank or other recordkeeping service on behalf of the Holder, the Holder must provide the Exchange with a copy of the written undertaking required to be filed with the Commission pursuant to Rule 17a-4(i) under the Act for the Exchange's records.

The Exchange believes it is important for the Exchange to receive a copy of the written undertaking to ensure that the Commission was properly notified that the books and records of a member are being maintained by a third party. In addition, by receiving a copy of the written undertaking, the Exchange will have information with respect to the Holders' books and records that is necessary for inspection purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(5) of the Act⁴ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is being designated by the Exchange as "non-controversial" pursuant to Section 19(b)(3)(A) of the Act⁵ and subparagraph (f)(6) of the Rule 19b-4 under the Act⁶ because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX provided the Commission with written notice of its intent to file this proposed rule change, along with a brief description and text of the proposed rule change, at least five

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 217 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4.

business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission.⁷ Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii), the proposed rule change does not become operative for 30 days from the date of filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁸

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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-PCX-2005-22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-0609. All submissions should refer to File No. SR-PCX-2005-22. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all electronic comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filings will also be

available for inspection and copying at the principal office of the PCX and will be available on the PCX's Internet Web site (<http://www.pacificex.com>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-PCX-2005-22 and should be submitted on or before July 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05-11681 Filed 6-13-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51799; File No. SR-PCX-2005-27]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Exchange's Calculation of the National Best Bid or Offer When Another Market Is Disconnected From the Intermarket Option Linkage

June 7, 2005.

On March 31, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to amend its rule regarding the PCX's calculation of the National Best Bid or Offer ("NBBO") when another market is disconnected from the Linkage.³ On April 19, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on May 4, 2005.⁵ The

Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that it is appropriate for PCX to remove a market's disseminated quote from PCX's calculation of the NBBO when a market is disconnected from Linkage because access to that market's quote is limited during such times. The Commission further believes that the proposed rule establishes an appropriate procedure to notify PCX OTP Holders⁹ and OTP Firms¹⁰ of such removal and establishes an appropriate standard for when to resume inclusion of the affected market's quote in PCX's calculation of the NBBO. The Commission also believes that it is consistent with the Act for PCX to move its current provisions for declaring an away market unreliable from PCX Rule 6.87(h)(4) to proposed PCX Rule 6.94(e) because eliminating certain markets' disseminated quotes from PCX's calculation of the NBBO removes such quotes from the applicability of other provisions of PCX Rule 6.94 that relate to the rights and obligations of PCX OTP Holders and OTP Firms in the event of a Trade-Through.¹¹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-PCX-2005-27) as amended, is approved.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Linkage" means the systems and data communications network that link electronically the options markets to one another for the purpose of sending and receiving Linkage Orders, related confirmations, order statuses and Administrative Messages. See Section 2(14) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").

⁴ See Form 19b-4 dated April 19, 2005 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

⁵ See Securities Exchange Act Release No. 51627 (April 28, 2005), 70 FR 23290.

⁶ 15 U.S.C. 78f.

⁷ In approving this proposal, the Commission 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(b)(5).

⁹ See Exchange Rule 1.1(q).

¹⁰ See Exchange Rule 1.1(r).

¹¹ A "Trade-Through" is a transaction in an options series at a price that is inferior to the NBBO. See Section 2(29) of the Linkage Plan.

¹² 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 240.19b-4(f)(6)(iii).

⁸ 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-3061 Filed 6-13-05; 8:45 am]

BILLING CODE 8010-01-P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new system of records and proposed routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled, the *National Docketing Management Information System* (NDMIS) and routine uses applicable to this system of records. Hereinafter, we will refer to the proposed system of records as the *NDMIS*. We invite public comments on this proposal.

DATES: We filed a report of the proposed new system of records and proposed routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 2, 2005. The proposed system of records and routine uses will become effective on July 12, 2005, unless we receive comments warranting it not to become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Schaul, Social Insurance Specialist, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, e-mail address at joyce.schaul@ssa.gov, or by telephone at (410) 965-5662.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New System of Records Entitled the *NDMIS*

A. General Background

The Office of the General Counsel (OGC) in SSA is responsible for the Agency's litigation workloads. In order to handle these workloads, OGC has to efficiently and effectively control, track, and maintain information about these workloads as they develop. For example, SSA receives communications from individuals and/or their representatives about legal matters that may result or have resulted in litigation. Information about such matters is maintained in the *NDMIS* to aid OGC's offices in SSA headquarters in Baltimore, and its 10 regional offices, to process these workloads. The system maintains and tracks records during all phases of processing each matter through its resolution.

B. Collection and Maintenance of the Data for the Proposed New System of Records Entitled the *NDMIS*

SSA must collect and maintain identifying information about individuals and/or their representatives; about individuals who are in communication with SSA regarding legal matters; about individuals against whom SSA may pursue or has pursued legal action; and about Government representatives who work on these matters. We will retrieve information from the proposed system of records by using certain identifiers, including the individual's name, Social Security number (SSN) and/or Employer Identification number. Thus, the *NDMIS* system will constitute a system of records under the Privacy Act of 1974, as amended.

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed *NDMIS*

A. Proposed Routine Use Disclosures

We are proposing to establish routine uses of information that will be maintained in the proposed *NDMIS* as discussed below.

1. *To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.*

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to information contained in this system of records. Information will be disclosed when the Office of the President makes

an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. *To a congressional office in response to an inquiry from that office made at the request of the subject of a record.*

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to information contained in this system of records. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. *To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:*

(a) *SSA, or any component thereof; or*
(b) *any SSA employee in his/her official capacity; or*

(c) *any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or*

(d) *the United States or any agency thereof where SSA determines that the litigation is likely to affect the operation of SSA or any of its components,*

is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure of any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be made unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees in litigation involving the proposed new system of records and ensure that courts and other tribunals have appropriate information.

4. *To student volunteers, individuals working under a personal service contract, and other individuals performing functions for SSA, but technically not having the status of Agency employees, if they need access to the records in order to perform their assigned Agency functions.*

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and

¹³ 17 CFR 200.30-3(a)(12).

community service programs. Examples of such statutes and programs include: 5 U.S.C. 3111 regarding student volunteers and 42 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned agency duties.

5. *To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.*

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

6. *Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.*

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904, as amended, with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. 44 U.S.C. 2906, as amended, provides that GSA and NARA are to have access to Federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

7. *The Commissioner shall disclose to the Secretary of Health and Human Services (HHS), or to any State, any record or information requested in writing by the Secretary to be so disclosed for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.*

We will disclose information under this routine use only when the records or information of such type were so disclosed under applicable rules, regulations and procedures that were in effect prior to SSA becoming independent of HHS.

8. *To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.*

We will disclose information to the EEOC to assist in investigations into alleged or possible discriminatory practices in the Federal sector and for other functions vested in the Commission.

9. *To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.*

We will disclose information under this routine use, as necessary, to the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, and the Federal Service Impasses Panel, or an arbitrator, when requested in connection with allegations of unfair labor practices, matters before an arbitrator or the Federal Service Impasses Panel.

10. *To the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. chapter 12, or as may be authorized by law.*

We will disclose information under this routine use, as necessary, to the Merit Systems Protection Board or the Office of Special Counsel when requested in matters pending before the Merit Systems Protection Board or the Office of Special Counsel.

11. *To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:*

- *To enable them to protect the safety of SSA employees and the public, the security of the SSA workplace, and the operation of SSA facilities, or*

- *To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.*

We will disclose information under this routine use to law enforcement agencies and private security contractors when information is needed to respond to, investigate, or prevent, activities that jeopardize the security and safety of the public, employees or workplaces or that otherwise disrupt the operation of SSA facilities. Information would also be disclosed to assist in the prosecution of persons charged with violating a Federal, State or local law in connection with such activities.

12. *To Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:*

- *Railroad Retirement Board (RRB) for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;*

- *The Veterans Administration (VA) for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;*

- *The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;*

- *State agencies for making determinations of Medicaid eligibility;*

- *State agencies for making determinations of food stamp eligibility under the food stamp program;*

- *To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations; and expenditures of Federal funds by the State in support of the Disability Determination Services;*

- *To State welfare departments pursuant to agreements with SSA for administration of State supplementation payments; for enrollment of welfare recipients for medical insurance under section 1843 of the Act; and for conducting independent quality assurance reviews of SSI recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review; and*

- *To State vocational rehabilitation agencies or State crippled children's service agencies (or other agencies*

providing services to disabled children) for consideration of rehabilitation services per sections 222 and 1615 of the Act.

We will disclose information under this routine use only for the purpose of supporting other government agencies that administer programs which have the same compatible purposes as SSA programs: *e.g.*, eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and SSA's disclosure regulation (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. SSA's Regulations at 20 CFR 401.150(c) permit us to disclose information under a routine use, where necessary, to carry out SSA programs. SSA's Regulations at 20 CFR 401.120 provide that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 5 and 8 through 12, above, will ensure efficient administration of SSA programs administered through the *NDMIS*; the disclosure that would be made under routine uses number 6 and 7 are required by law. The proposed routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Records Storage Medium and Safeguards for the Proposed New System Entitled the *NDMIS*

SSA will maintain information in the *NDMIS* in electronic form. Only authorized SSA and contractor personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer system that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to or disclosure of such information.

Contractor personnel having access to data in the *NDMIS* will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA and contractor personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. See 5 U.S.C. 552a(i)(1).

IV. Effect of the Proposed *NDMIS* on the Rights of Individuals

The proposed new system of records will maintain only that information that is necessary for the efficient and effective control and processing of the *NDMIS* in order to maintain, track and process SSA's litigation workload. Security measures will be employed that protect access to and preclude unauthorized disclosure of records in the proposed system of records. Therefore, we do not anticipate that the proposed system of records will have an unwarranted adverse effect on the rights of individuals.

Dated: June 2, 2005.

Jo Anne B. Barnhart,
Commissioner.

Notice of System of Records Required by the Privacy Act of 1974, as Amended

SYSTEM NUMBER:

60-0318.

SYSTEM NAME:

National Docketing Management Information System (*NDMIS*).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The Office of the General Counsel, Executive Officer, Room 600, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information about (1) Individuals and/or their representatives who filed a claim for benefits under Social Security Act programs and who may pursue, or have pursued, litigation with SSA; (2) individuals and/or their representatives who have communicated or corresponded with SSA about a matter that may result in litigation with SSA; (3) current, former, and prospective SSA employees and/or their representatives who may pursue, or have pursued, litigation about employment issues with SSA; (4) individuals, including current, former and prospective employees against whom SSA may pursue, or has pursued, legal action; and (5)

Government representatives who work on these matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The *NDMIS* consists of identification information about a variety of administrative and civil litigation and identification information about communications and correspondence that may result, or has resulted, in litigation brought against, or by, SSA. SSA receives records of court dockets relating to legal matters from individuals and/or their representatives who may pursue, or have pursued, litigation with SSA. SSA receives documents submitted or filed by plaintiffs, grievants, complainants and appellants to prosecute civil or administrative litigation against SSA. *NDMIS* contains identification information about the litigation initiated against SSA by individuals who have filed a claim for benefits under SSA programs as well as civil rights complaints; and by current, former, and prospective employees such as complaints, grievances, unfair labor practice claims, appeals and waiver requests. SSA receives inquiries, communications and correspondence from individuals that may result in litigation brought against, or by, SSA. This system contains information about these matters, including the name of the individual/claimant/SSA employee, his/her Social Security number (SSN), date of the initial contact, type of inquiry, court civil action number, district court name, administrative case number, administrative case name, status of the case, disposition of the case, name of the claimant's representative and Employer Identification number, if applicable, and identification information about the Government's representatives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) (42 U.S.C. 405(a)), 206(a) (42 U.S.C. 406(a)) and (1631(d) (42 U.S.C. 1383(d)) of the Social Security Act, as amended; 44 U.S.C. 3103 *et seq.*, as amended; 5 U.S.C. 7121, as amended; 5 CFR part 771; 5 CFR part 1201, as amended; 42 U.S.C. 2000e *et seq.*, as amended; 29 CFR chapter XVI, as amended; 29 U.S.C. 633a and 701 *et seq.*, as amended.

PURPOSE(S):

The Office of the General Counsel (OGC) in SSA is responsible for the Agency's litigation workloads. The *NDMIS* system enables OGC to control, track, maintain and process these workloads. The system retains the history of a case and tracks movement of the case through the various levels of

administrative and civil litigation. Information about events at each level are maintained in this system to aid OGC's offices in SSA headquarters, and its 10 regional offices, in all phases of processing this workload through the resolution of each legal matter.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

- SSA, or any component thereof; or
- Any SSA employee in his/her official capacity; or
- Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or
- The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure may be made for routine uses as indicated below. However, disclosure of any information defined as "return" or "return information" under 26 U.S.C. 6103 of the Internal Revenue Code will not be made unless authorized by a statute, the Internal Revenue Service (IRS) or IRS regulations.

4. To student volunteers, individuals working under a personal services contract, and other individuals performing functions for SSA, but technically not having the status of Agency employees if they need access to the records in order to perform their assigned Agency functions.

5. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a

contractual or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

6. Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those Agencies in conducting records management studies.

7. The Commissioner shall disclose to the Secretary of Health and Human Services (HHS), or to any State, any record or information requested in writing by the Secretary to be so disclosed for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.

8. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

9. To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with the investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.

10. To the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. chapter 12, or as may be authorized by law.

11. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

- To enable them to protect the safety of SSA employees and the public, the security of the SSA workplace, the operation of SSA facilities, or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or

activities that disrupt the operation of SSA facilities.

12. To Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

- Railroad Retirement Board (RRB) for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;
- The Veterans Administration (VA) for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;
- The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;
- State agencies for making determinations of Medicaid eligibility;
- State agencies for making determinations of food stamp eligibility under the food stamp program;
- To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations; and expenditures of Federal funds by the State in support of the Disability Determination Services (DDS);
- To State welfare departments pursuant to agreements with SSA for administration of State supplementation payments; for enrollment of welfare recipients for medical insurance under section 1843 of the Act; and for conducting independent quality assurance reviews of SSI recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review; and
- To State vocational rehabilitation agencies or State crippled children's service agencies (or other agencies providing services to disabled children) for consideration of rehabilitation services per sections 222 and 1615 of the Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained electronically.

RETRIEVABILITY:

Records are retrievable by claimant/employee name, his/her SSN, administrative tribunal number or court civil action number.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data and the storage of computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. SSA employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system. See 5 U.S.C. 552a(i)(1).

Contractor personnel having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

RETENTION AND DISPOSAL:

Data will be maintained electronically on all active Agency litigation workloads from receipt through resolution. Information in this new system of records will be retained in accordance with OGC's internal policy directive that information will be retained until final disposition of the matter.

SYSTEM MANAGER AND ADDRESS:

Executive Officer, Office of the General Counsel, Social Security Administration, 6401 Security Blvd., Baltimore, Maryland 21235-6401.

NOTIFICATION PROCEDURE(S):

An individual can determine if this system contains a record about him/her by writing to the systems manager at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If we determine that the identifying information that the individual provides by telephone is insufficient, we will require the individual to submit a

request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.45).

RECORD ACCESS PROCEDURE(S):

Same as "Notification" procedure(s). Requesters also should specify reasonably the record contents they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

CONTESTING RECORD PROCEDURE(S):

Same as "Notification" procedure(s). Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from SSA claimants and/or their representatives; SSA employees (current, former and prospective) and/or their representatives; Government contractors; SSA personnel and records; documents relating to the claim, appeal, grievance or complaint; civil courts; the Equal Employment Opportunity Commission, the Merit Systems Protection Board and other similar organizations, and from information on incoming legal matters relating to litigation or possible litigation with the Agency.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 05-11745 Filed 6-13-05; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 5096]

Culturally Significant Objects Imported for Exhibition Determinations: "The Legacy of Homer: Four Centuries of Art From the Ecole National Supérieure des Beaux-Arts, Paris"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Legacy of Homer: Four Centuries of Art from the Ecole National Supérieure des Beaux-Arts, Paris," 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 owner. I also determine that the exhibition or display of the exhibit objects at The Dahesh Museum of Art, New York, New York, from on or about October 11, 2005 to on or about January 22, 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. Sulzysky, 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: June 3, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05-11737 Filed 6-13-05; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[Summary Notice No. PE-2005-32]****Petitions for Exemption; Summary of Petitions Received****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 5, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA-2005-21408 or FAA-2005-21412 by any of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lender (202) 267-8029 or John Linsenmeyer (202) 267-5174, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

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

Ida M. Klepper,

Acting Director, Office of Rulemaking.

Petitions For Exemption

Docket No.: FAA-2005-21408.

Petitioner: Agusta Aerospace Corporation.

Section of 14 CFR Affected: 14 CFR 43.3(a), 43.7, 145.101, and 145.103.

Description of Relief Sought: To permit Agusta Aerospace Corporation to supply its U.S. customers with parts and components repaired by non-FAA certified original equipment manufacturers that are under the quality control system of Agusta S.p.A. Agusta holds the type certificate and production approvals for the aircraft upon which these parts and components are installed.

Docket No.: FAA-2005-21412.

Petitioner: Grant County Airport.

Sections of 14 CFR Affected: 14 CFR 139.315, 139.317, and 139.319.

Description of Relief Sought: To allow Grant County Airport to operate as a 14 CFR 139 certificated airport without meeting certain aircraft rescue and firefighting requirements.

[FR Doc. 05-11732 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Environmental Impact Statement: Orange County, NC**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an environmental impact statement will be prepared for the extension of Elizabeth Brady Road in Hillsborough, Orange County, North Carolina (TIP Project U-3808).

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, PE, Operations Engineer, Federal highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601-1418, Telephone: (919) 856-4350, ext. 133; or

Vincent J. Rhea, PE, Project Engineer, North Carolina Department of Transportation, 1548 Mail Service Center, Raleigh, NC 27699-1548, Telephone: (919) 733-7844, ext. 261.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an Environmental Impact Statement (EIS)

on a proposal to improve and extend Elizabeth Brady Road from US 70 Business to US 70 Bypass. The proposed project would be approximately 1.5 miles (2.4 kilometers) in length and would include either a new bridge across the Eno River or reconstruction of an existing bridge.

The proposed project is considered necessary to relieve forecasted congestion in downtown Hillsborough along Churton Street (US 70 Business) and St. Mary's Road. Alternatives under consideration include: (1) Taking no action; (2) Two alignment alternatives that would require construction of a new bridge over the Eno River; and (3) One alignment alternative that would not require construction of a new bridge. The alternatives to be evaluated in the EIS were chosen based on the results of an alternatives analysis conducted in 2003 and 2004 which evaluated six build alternatives.

On December 14, 2000, an interagency scoping meeting was held to introduce the project to Federal, State, and local agencies. Key environmental issues raised during the meeting were: (1) Impacts to historic resources, including Ayr Mount and a former NASCAR race track; and (2) increased flooding of the Eno River due to highway structures. In January 2001, a letter describing the proposed action and soliciting comments was sent to appropriate Federal, State and local agencies.

In July 2003, as part of the alternative study, a citizen informational workshop was held. A second citizen informational workshop was held in September 2004 following identification of alternatives to be evaluated.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Clarence W. Coleman, PE

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 05-11665 Filed 6-13-05; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION**[STB Finance Docket No. 34692]****Surface Transportation Board**

Denver Terminal Railroad Company, d/ b/a Denver Rock Island Railroad— Acquisition and Operation Exemption—Rail Lines of Union Pacific Railroad Company; Notice

Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad (DRIR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Union Pacific Railroad Company (UP) and operate rail lines commonly known as the Stock Yard Lead and the North Washington Industrial Track in Denver and Adams Counties, CO. The Stock Yard Lead line of railroad consists of Track 12, extending from a point of connection with a UP main line north of East 58th Avenue in unincorporated Adams County to a point of connection with existing DRIR trackage at or near Race Court in the City of Denver, Denver County, a distance of 5,750 feet, or 1.09 miles, plus the following auxiliary tracks: Track 12A (450 feet); Track 12B (750 feet); Track 12C (1,767 feet); and Track 12D (1,845 feet), for a total distance of approximately 10,562 feet, or 2 miles. The North Washington Industrial Track line of railroad consists of Track 122, extending from a point of connection with UP trackage east of North Washington Street to the end of the track north of East 68th Avenue, all in unincorporated Adams County, a distance of approximately 2.2 miles. Numerous auxiliary tracks are also part of the North Washington Industrial Track. DRIR has been leasing and operating the Stock Yard Lead from UP since 2005.¹ The purpose of this transaction is to convert DRIR's leasehold interest into an ownership interest, and to obtain acquisition and operation authority for the North Washington Industrial Track.²

DRIR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. The transaction is scheduled to be consummated no sooner than May 27, 2005, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

¹ See *Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad—Lease and Operation Exemption—Rail Line of Union Pacific Railroad Company*, STB Finance Docket No. 34637 (STB served Jan. 12, 2005).

² Acquisition of the Stock Yard Lead and North Washington Industrial Track by DRIR is part of an exchange of trackage whereby UP acquired DRIR's Sandown-Belt Junction line in Denver. See *Union Pacific Railroad Company—Acquisition and Operation Exemption—Line of Denver Terminal Railroad Company, d/b/a Denver Rock Island Railroad*, STB Finance Docket No. 34631 (STB served Apr. 1, 2005).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34692, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: June 6, 2005.

By the Board, David M. Konschnick, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 05–11556 Filed 6–13–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Customer Identification Programs for Futures Commission Merchants and Introducing Brokers.

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN invites comment on a proposed extension of a currently approved requirement that futures commission merchants and introducing brokers establish a customer identification program as required under section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. This request for comments covers 31 CFR 103.123. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before August 15, 2005.

ADDRESSES: Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, PO Box 39, Vienna, Virginia 22183, Attention: PRA Comments—CIP for FCMs and IBs. Comments also may be submitted by electronic mail to the following Internet address: regcomments@fincen.treas.gov, again with a caption, in the body of the text, “Attention: PRA Comments—CIP for FCMs and IBs.”

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800–949–2732, select option 3, or contact Helene D. Schroeder, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5450; or AMLstaff@cftc.gov.

SUPPLEMENTARY INFORMATION:

Title: Customer Identification Programs For Futures Commission Merchants and Introducing Brokers, 31 CFR 103.123.

OMB Number: 1506–0022.

Form Number: N/A.

Abstract: The statute generally referred to as the “Bank Secrecy Act,” Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.¹ Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

Section 326 of the USA PATRIOT Act added a new subsection (l) to 31 U.S.C. 5318 of the Bank Secrecy Act that requires the Secretary of the Treasury to require financial institutions to establish and maintain programs to verify the identity of customers opening an account. On May 9, 2003, FinCEN and the Commodity Futures Trading Commission issued a joint final rule (68 FR 25149) requiring futures commission merchants and introducing brokers to establish a customer identification program (“CIP rule”). The final CIP rule can also be found at 31 CFR 103.123.

¹ Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the “USA PATRIOT Act”), Pub. L. 107–56.

This notice, which has been developed jointly with the Commodity Futures Trading Commission, is presented only for purposes of soliciting public comment on the proposed extension without change of the current rule.

Type of Review: Extension without change of a currently approved collection.

Affected public: Business or other for-profit institutions.

Frequency: As required. Estimated average annual burden for the recordkeeping requirements of the rule for each respondent: 10 hours.

Estimated average annual burden for the disclosure requirements of the rule per each respondent: 1 hour.

Estimated number of respondents: 1,861.

Estimated Total Annual Reporting and Recordkeeping Burden: 20,471 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the recordkeeping requirement is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: June 2, 2005.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 05-11808 Filed 6-10-05; 12:58 pm]

BILLING CODE 4810-02-P

DEPARTMENT OF THE TREASURY

Financial Management Service; Privacy Act of 1974; Systems of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, Financial Management Service is publishing its inventory of Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A-130, Financial Management Service (FMS) has completed a review of its Privacy Act systems of records notices to identify minor changes to those notices.

The following systems of records have been added to the bureau's inventory of Privacy Act notices since August 21, 2001:

FMS .004—Education and Training Records, published June 3, 2004, at 69 FR 31454.

FMS .017—Collections Records, published on February 4, 2003, at 68 FR 5691.

This publication incorporates the amendments to FMS.003 published on January 9, 2003 at 68 FR 1216, FMS.002, .014 and .016 published on February 26, 2003 at 68 FR 8964, FMS.002 and .016 published on April 1, 2003 at 68 FR 15796, and FMS.016 published on May 6, 2004 at 69 FR 25461.

The systems notices are reprinted in their entirety following the Table of Contents.

Systems Covered by This Notice

This notice covers all systems of records adopted by the Bureau up to May 2, 2005. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: June 2, 2005.

Nicholas Williams,

Deputy Assistant Secretary for Headquarters Operations.

Financial Management Service (FMS)

Table of Contents

FMS. 001—Administrative Records.

FMS .002—Payment Issue Records for Regular Recurring Benefit Payments.

FMS .003—Claims and Inquiry Records on Treasury Checks, and International Claimants.

FMS .004—Education and Training Records

FMS .005—FMS Personnel Records.

FMS .007—Payroll and Pay Administration.

FMS .010—Records of Accountable Officers'

Authority With Treasury.
FMS .012—Pre-complaint Counseling and Complaint Activities.

FMS .013—Gifts to the United States.

FMS .014—Debt Collection Operations System.

FMS .016—Payment Records for Other Than Regular Recurring Benefit Payments.

FMS .017—Collections Records

TREASURY/FMS.001

SYSTEM NAME:

Administrative Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East-West Highway, Room 144, Hyattsville, MD 20782. Also, please see Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Financial Management Service personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Motor Vehicle Accident Reports. (2) Parking Permits. (3) Distribution list of individuals requesting various Treasury publications. (4) Treasury Credentials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose to GSA for drivers permits, parking permits, accident reports, and credentials;
(2) Disclose to GPO for servicing public on Treasury publications.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy and microcomputer.

RETRIEVABILITY:

By name and by Treasury publication.

SAFEGUARDS:

Locked containers.

Administrative Procedure—names are not given to anyone except those who control the listing.

RETENTION AND DISPOSAL:

(1) Distribution List—destroy one year after declared obsolete.

(2) Motor Vehicle Accident Reports—six years after closure of the case.

(3) Parking permits and Treasury Credentials—destroy 3 months after return to issuing officer.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Facilities Management
Division, Financial Management
Service, U.S. Department of the
Treasury, Prince George Metro Center II,
3700 East-West Highway, Room 144,
Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be sent to the Disclosure Officer, Financial Management Service, U.S. Department of the Treasury, Liberty Center Building, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Financial Management Service personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

APPENDIX I to FMS.001

Motor Vehicle Accident Reports:
Prince George Metro Center II, 3700
East-West Highway, Room 127,
Hyattsville, MD 20782.

Parking Permits: 1. Prince George
Metro Center II, 3700 East-West
Highway, Room 127, Hyattsville, MD
20782.

2. Liberty Center Building, 401 14th
Street, SW., Room 118, Washington, DC
20227.

Distribution List: Prince George Metro
Center II, 3700 East-West Highway,
Hyattsville, MD 20782.

Treasury Credentials: Prince George
Metro Center II, 3700 East-West
Highway, Room 158-B, Hyattsville, MD
20782.

TREASURY/FMS.002**SYSTEM NAME:**

Payment Issue Records for Regular
Recurring Benefit Payments—Treasury/
Financial Management Service.

SYSTEM LOCATION:

The Financial Management Service,
U.S. Department of the Treasury,
Washington, DC 20227 and Hyattsville,
MD 20782. Records maintained at
Financial Centers in five regions:
Austin, TX; Birmingham, AL; Kansas
City, MO; Philadelphia, PA; and San
Francisco, CA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- (1) Beneficiaries of Title II of the Social Security Act.
- (2) Beneficiaries of Title XVI of the Social Security Act.
- (3) Beneficiaries of the Civil Service Retirement System.
- (4) Beneficiaries of the Railroad Retirement System.
- (5) Beneficiaries of the Department of Veterans Affairs.
- (6) Holders of Series H and HH Bonds (interest payment).

CATEGORIES OF RECORDS IN THE SYSTEM:

Payment issue records for regular recurring benefit payments showing name, check number and symbol, or other identification, address, account number, payment amount, and date of issuance for each of the categories of individuals listed above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 6166,
dated June 10, 1933.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

- (1) Disclose to banking industry for payment verification;
- (2) Disclose to Federal investigative agencies, Departments and agencies for whom payments are made, and payees;
- (3) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;
- (4) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested

information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(5) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(6) Disclose information to foreign governments in accordance with formal or informal international agreements;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(9) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(10) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(11) Disclose information concerning delinquent debtors to Federal creditor agencies, their employees, or their agents for the purpose of facilitating or conducting Federal administrative offset, Federal tax refund offset, Federal salary offset, or for any other authorized debt collection purpose;

(12) Disclose information to any State, Territory or Commonwealth of the United States, or the District of Columbia to assist in the collection of State, Commonwealth, Territory or District of Columbia claims pursuant to a reciprocal agreement between FMS and the State, Commonwealth, Territory or the District of Columbia;

(13) Disclose to the Defense Manpower Data Center and the United States Postal Service and other Federal agencies through authorized computer matching programs for the purpose of identifying and locating individuals who are delinquent in their repayment of debts owed to the Department or other Federal agencies in order to collect those debts through salary offset and administrative offset, or by the use of other debt collection tools;

(14) Disclose information to a contractor of the Financial Management Service for the purpose of performing routine payment processing services,

subject to the same limitations applicable to FMS officers and employees under the Privacy Act; and

(15) Disclose information to a fiscal or financial agent of the Financial Management Service, its employees, agents, and contractors, or to a contractor of the Financial Management Service, for the purpose of ensuring the efficient administration of payment processing services, subject to the same or equivalent limitations applicable to FMS officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm-magnetic tape for categories of individuals 1 through 6.

RETRIEVABILITY:

By account number.

SAFEGUARDS:

Computer password system, card-key entry system, limited to authorized personnel.

RETENTION AND DISPOSAL:

Indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Disbursing Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR, part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Voucher certifications by Departments and agencies for whom payments are made.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.003

SYSTEM NAME:

Claims and Inquiry Records on Treasury Checks, and International Claimants—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East-West Highway, Room 727D, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Payees and holders of Treasury checks, (2) Claimants awarded benefits under the War Claims Act and the International Claims Settlement Act of 1949.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Treasury check claim file: Treasury check, claim of payee with name and address, settlement action taken.
(2) Awards for claims for losses sustained by individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; (1) For Treasury check claims—31 U.S.C. 71 with delegation of authority from Comptroller General of the United States; (2) International claims—50 U.S.C. 2012; 22 U.S.C. 1627, 1641, 1642.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is routinely disclosed to endorers concerning checks for which there is liability, Federal agencies, State and local law enforcement agencies, General Accounting Office, Congressional offices and media assistance offices on behalf of payee claimants.

(2) International Claims—Information in files is used by claimants (awardees) and their representatives, Foreign Claims Settlement Commission, and Congressmen. These records and information in the records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule,

regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, and

(9) Disclose information to the public when attempts by FMS to locate the claimant have been unsuccessful. This information is limited to the claimant's name and city and state of last known address, and the amount owed to the claimant. (This routine use does not apply to the Iran Claims Program or the Holocaust Survivors Claims Program or other claims programs that statutorily prohibit disclosure of claimant information.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) Claim file folders, card/paper checks, microfilm, and magnetic media.
(2) Correspondence files.
(3) Claim file folders.

RETRIEVABILITY:

(1) Name of payee and check number and symbol.

(2) Alpha cross-reference to case number.

(3) Name of claimant or alpha reference to claim number.

SAFEGUARDS:

(1) Secured building,

(2) Secured files in secured building.

RETENTION AND DISPOSAL:

(1) Claim files and checks, six years seven months; Microfilm, indefinitely.

(2) Correspondence files—seven years.

(3) Claim file folders—indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Category 1: Director, Financial Processing Division, Prince George Metro Center II, 3700 East-West Highway, Room 727D, Hyattsville, MD 20782. Category 2: Director, Funds Management Division, Prince George Metro Center II, 3700 East-West Highway, Room 620D, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system managers will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to: Disclosure Officer, Financial Management Service, U.S. Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

(1) Individual payees of Treasury checks, endorers of Treasury checks, investigative agencies, contesting claimants.

(2) Awards certified to Treasury for payment by Foreign Claims Settlement Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.004**SYSTEM NAME:**

Education and Training Records—Treasury/FMS.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, 401 14th St., SW., Washington, DC 20227; Financial Management Service, U.S. Department of the Treasury, 1990 K Street, NW., Suite 300, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Government employees (including separated employees, in certain cases) and other individuals who access and apply for FMS training services.

CATEGORIES OF RECORDS IN THE SYSTEM:

- (1) Personal Profile—Account Record;
- (2) Transcript Record;
- (3) Enrollment Status Record;
- (4) Job Skills Record;
- (5) Individual Development Plan Record;
- (6) Assessment Performance Results Record;
- (7) Managerial Approval/Disapproval Status Record;
- (8) Class Roster Record;
- (9) Certificate—Training Program Status Record;
- (10) Class Evaluation Record;
- (11) Payment Record;
- (12) Statistical Reports—retrievable by names: (a) Personnel Transcript Report, (b) Class Enrollment Report, (c) Class Payment/Billing Report, (d) Status of Training Report, (e) Ad hoc Training Report, and (f) Other similar files or registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; 31 U.S.C. chapter 33; 31 U.S.C. 3720.

PURPOSE(S):

The purpose of this system is to maintain records about Government employees and other individuals who participate in FMS' education and training program. The information contained in the records will assist FMS in properly tracking individual training and accurately account for training revenue and expenditures generated through the FMS' training programs (for example, Learning Management System (LMS)). For FMS personnel, the records contained in FMS' training records will

also assist managers' active participation in their employees' learning plans. FMS maintains the information necessary to ensure that FMS keeps accurate records related to classes, including a training participant's training and enrollment status, class completion information, transcripts and certificates of accomplishment. FMS also maintains the records to ensure that financial records pertaining to a training participant's payment for training fees are maintained accurately. FMS' training records will serve to report receipts to the appropriate Federal agency (currently the Treasury Department's Bureau of Public Debt) responsible for maintaining FMS' financial records for training. Finally, the information contained in the covered records will be used for collateral purposes related to the training processes, such as the collection of statistical information on training programs, development of computer systems, investigation of unauthorized or fraudulent activity related to submission of information to FMS for training program purposes and the collection of debts arising out of such activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(2) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Federal agencies, financial institutions, and contractors for the purpose of performing financial management services, including, but not limited to, processing payments, investigating and rectifying possible erroneous reporting information, testing and enhancing related computer systems, creating and reviewing statistics to improve the quality of

services provided, or conducting debt collection services;

(5) Federal agencies, their agents and contractors for the purposes of facilitating the collection of receipts, determining the acceptable method of collection, the accounting of such receipts, and the implementation of programs related to the receipts being collected as well as status of their personnel training, statistical training information;

(6) Financial institutions, including banks and credit unions, and credit card companies for the purpose of collections and/or investigating the accuracy of information required to complete transactions using electronic methods and for administrative purposes, such as resolving questions about a transaction;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(8) Foreign governments in accordance with formal or informal international agreements and maintain proper administrative or financial controls related to the training activity;

(9) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(10) Federal agencies, their agents and contractors, credit bureaus, and employers of individuals who owe delinquent debt when the debt arises from the unauthorized use of electronic payment methods. The information will be used for the purpose of collecting such debt through offset, administrative wage garnishment, referral to private collection agencies, litigation, reporting the debt to credit bureaus, or for any other authorized debt collection purpose, and

(11) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic media, such as server hard drive, magnetic back-up tape storage, removable optical storage backup media (such as compact disc (CD) or Digital Video Disc {DVD}{time}) and hard copy.

RETRIEVABILITY:

All captured data (both personal and course) and information can be retrieved

as required for the proper administration of the system, within the LMS software's capability. Generally, for training purposes, these records will be retrieved by Class Name and/or Organization Name and Participant Name. For financial purposes, these records will generally be by Name, Organization and payment information (Credit Card, Form 182, DD Form 1556, for example).

SAFEGUARDS:

All records are maintained in a secured building, secured room, and locked cabinets. FMS personnel access to training data is primarily for the purpose of using the training services or administering the LMS. For technical and administrative purposes, non-FMS personnel access is limited to contractors who are maintaining the LMS system in the normal performance of their duties and have completed non-disclosure statements and undergone security background checks consistent with their access in accordance with the existing contract.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Treasury Agency Services, Financial Management Service, U.S. Department of the Treasury, 1990 K Street, NW., Suite 300, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access to or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record Access Procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by: The individual on whom the record is maintained; the individual's employer, other governmental agency or educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.005

SYSTEM NAME:

FMS Personnel Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, 401 14th St., SW., Washington, DC 20227; Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East-West Highway, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Employees of Service (separated employees—in certain cases) and applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

- (1) Locator Cards.
- (2) Incentive Awards Record.
- (3) Official Personnel Folder.
- (4) Personnel Roster.
- (5) Logs of SF-52's.
- (6) Correspondence File.
- (7) Position Listings.
- (8) Position Descriptions with Evaluation Statements.
- (9) Personnel Management Evaluation Survey Reports.
- (10) Request for Certification File.
- (11) Merit Promotion File.
- (12) Exit Interview File.
- (13) Performance File.
- (14) Statistical Reports—retrievable by names: (a) Personnel Status Report, (b) Ad Hoc Retiree Report, (c) Monthly EEO report, (d) Direct Hire Authority Report, (e) Registers Worked File, (f) Statements of Employment and Financial Interest, and (g) Other similar files or registers.
- (15) Training Course Nominations.
- (16) Evaluation of Training Program.
- (17) Tuition Assistance Files.
- (18) Senior Executive Service Development File.
- (19) Management Development File.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10561, dated September 13, 1954, Federal Personnel Manual, and Title 5 of U.S.C. Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Hard copy and magnetic storage.

RETRIEVABILITY:

Alphabetically by name; also in some instances by organization, then Social Security number.

SAFEGUARDS:

Secured building, secured room, and locked cabinets. Non-FMS access is limited to investigators from OPM, etc., members of Fair Employment staff and Union officials.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Division, Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East-West Highway, Room 115-F, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Applicant Personnel Action Forms (SF-50), SF-171 (completed by applicant), Payroll Actions References, Educational Institutions, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.007**SYSTEM NAME:**

Payroll and Pay Administration—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince

George Metro Center II, 3700 East-West Highway, Room 133 and 101A, Hyattsville, MD 20782; and Room 120, Liberty Center Building, Washington, DC 20227.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Service and separated employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Official Payroll Folder (a) Levy and Garnishment Records. (b) SF-1192—Savings Bond Authorization. (c) SF-1199A—Allotment of Pay to Saving Account. (d) Copies of SF-50—Notification of Personnel Action. (e) Withholding Tax Exemptions. (f) Copy of Health Benefit Designation. (g) Copy of Life Insurance Forms. (h) Payroll Change Slips. (i) Combined Federal Campaign Designations. (j) Copy of SF-1150. (2) Time and Attendance Reports (a) SF-71 Request for Leave. (b) Court Leave Documents. (c) Request for Advancement of Leave. (3) Payroll Comprehensive Listing (a) Current Payment Information. (b) Record of Leave Earned and Used. (c) All Deductions from Pay. (d) Personnel Information such as Grade, Step, Salary, Title, Date of Birth, Social Security Number, Veterans Preference, Tenure, etc. (4) Payroll Control Registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5—Pay, Leave and Allowances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure permitted to Federal Agencies and to State and Local Agencies for tax purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Hard copy, microfiche, and magnetic media.

RETRIEVABILITY:

By Social Security number.

SAFEGUARDS:

Secured building, secured room and locked cabinets.

RETENTION AND DISPOSAL:

Records are stored, maintained and disposed of in accordance with General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Division, Financial Management Service, Prince George Metro Center II,

3700 East-West Highway, Room 115-F, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

From individual Service employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.010**SYSTEM NAME:**

Records of Accountable Officers' Authority with Treasury—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Liberty Center Building, 401 14th Street, SW., Washington, DC 20227.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- (1) Regional Directors.
- (2) Certifying Officers.
- (3) Designated Agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained on the above listed accountable officers showing the designation or removal of the officer to act in the specified capacity pursuant to a proper authorization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 6166, dated June 10, 1933.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose to Banking institutions, Federal Reserve Banks, and Government agencies for verification of information on authority of accountable officers to determine propriety of actions taken by such individuals;

(2) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(5) Disclose information to foreign governments in accordance with formal or informal international agreements;

(6) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(8) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and

(9) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Card files; paper files.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Regional Directors' files are locked.

RETENTION AND DISPOSAL:

Hard-copy records are maintained and disposed of in accordance with General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Disbursing Officer, Financial Management Service, U.S. Department of the Treasury, 401 14th Street, SW., Room 343, Washington, DC 20227.

Director, Austin Regional Financial Center, Financial Management Service, Department of the Treasury, 1619 E. Woodward Street, Austin, TX 78741.

Director, Birmingham Regional Financial Center, Financial Management Service, Department of the Treasury, 190 Vulcan Road, Birmingham, AL 35109.

Director, Chicago Regional Financial Center, Financial Management Service, Federal Office Building, 536 S. Clark Street, Chicago, IL 60605.

Director, Kansas City Regional Financial Center, Financial Management Service, Department of the Treasury, 2100 W. 36th Avenue, Kansas City, KS 66103.

Director, Philadelphia Regional Financial Center, Financial Management Service, 1300 Townsend Road, Philadelphia, PA 19154. Director, San Francisco Regional Financial Center, 390 Main Street, San Francisco, CA 94104.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system managers will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Government Departments and Agencies requiring services of Treasury Department for issuance and payment of Treasury checks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.012**SYSTEM NAME:**

Pre-complaint Counseling and Complaint Activities—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Treasury Department, Prince George Metro Center II, 3700 East-West Highway, Room 132, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees seeking services of EEO Counselors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Monthly pre-complaint activity reports from seven Financial Centers and Headquarters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7154; 42 U.S.C. 200e-16; Executive Order 11478; and 5 CFR part 713.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to keep records on EEO Counseling activities for annual submission to Treasury.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

File cabinet.

RETRIEVABILITY:

Filed by station and date of receipt.

SAFEGUARDS:

Staff supervision is maintained during the day. Records are kept locked in the files.

RETENTION AND DISPOSAL:

Reports destroyed at the end of four years.

SYSTEM MANAGER(S) AND ADDRESS:

EEO Officer, Financial Management Service, Prince George Metro Center II, 3700 East-West Highway, Room 132, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Monthly submissions by Financial Centers and Headquarters.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.013**SYSTEM NAME:**

Gifts to the United States-Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George Metro Center II, 3700 East-West Highway, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of inter vivos and testamentary gifts to the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, copies of wills and court proceedings, and other material related to gifts to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3113.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside of the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Filing cabinets.

RETRIEVABILITY:

Name of donor.

SAFEGUARDS:

Access is limited to persons on official business.

RETENTION AND DISPOSAL:

Records are maintained for 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Financial Information Management, Directorate, Financial Management Service, Prince George Metro Center II, 3700 East-West Highway, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements:

- (1) Identify the record system;
- (2) Identify the category and type of records sought; and
- (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

Address inquiries to Disclosure Officer (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Disclosure Officer, Financial Management Service, U.S. Department of the Treasury, Liberty Center Building, 401 14th Street, SW., Washington, DC 20227.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Individuals, executors, administrators and other involved persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.014**SYSTEM NAME:**

Debt Collection Operations System—Treasury/Financial Management Service.

SYSTEM LOCATION:

Records are located in the offices of and with the Debt Management Services staff of the Financial Management Service, U.S. Department of the Treasury at the following locations: Liberty Center Building (Headquarters), 401 14th Street, SW., Washington, DC 20227; Prince George's Plaza, 3700 East-West Highway, Hyattsville, MD, 20782; and the Birmingham Debt Management

Operations Center, 190 Vulcan Road, Homewood, Alabama, 35209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe debts to: (a) The United States, through one or more of its departments and agencies; and/or (b) States, territories and commonwealths of the United States, and the District of Columbia (hereinafter collectively referred to as "states").

CATEGORIES OF RECORDS IN THE SYSTEM:

Debt records containing information about the debtor(s), the type of debt, the governmental entity to which the debt is owed, and the debt collection tools utilized to collect the debt. The records may contain identifying information, such as name(s) and taxpayer identifying number (*i.e.*, social security number or employer identification number); debtor contact information, such as work and home address, and work and home telephone numbers; and name of employer and employer address. Debts include unpaid taxes, loans, assessments, fines, fees, penalties, overpayments, advances, extensions of credit from sales of goods or services, and other amounts of money or property owed to, or collected by, the Federal Government or a state, including past due support which is being enforced by a state. The records also may contain information about: (a) The debt, such as the original amount of the debt, the debt account number, the date the debt originated, the amount of the delinquency or default, the date of delinquency or default, basis for the debt, amounts accrued for interest, penalties, and administrative costs, and payments on the account; (b) Actions taken to collect or resolve the debt, such as copies of demand letters or invoices, documents or information required for the referral of accounts to collection agencies or for litigation, and collectors' notes regarding telephone or other communications related to the collection or resolution of the debt; and (c) The referring or governmental agency that is collecting or owed the debt, such as name, telephone number, and address of the agency contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Pub. L. 89-508), as amended by the Debt Collection Act of 1982 (Pub. L. 97-365, as amended); Deficit Reduction Act of 1984 (Pub. L. 98-369, as amended); Debt Collection Improvement Act of 1996 (Pub. L. 104-134, sec. 31001); Taxpayer Relief Act of 1997 (Pub. L. 105-34); Internal Revenue Service Restructuring and Reform Act of 1998

(Pub. L. 105-206); 26 U.S.C. 6402; 26 U.S.C. 6331; 31 U.S.C. Chapter 37 (Claims), Subchapter I (General) and Subchapter II (Claims of the U.S. Government).

PURPOSE(S):

The purpose of this system is to maintain records about individuals who owe debt(s) to the United States, through one or more of its departments and agencies, and/or to states, including past due support enforced by states. The information contained in the records is maintained for the purpose of taking action to facilitate the collection and resolution of the debt(s) using various collection methods, including, but not limited to, requesting repayment of the debt by telephone or in writing, offset, levy, administrative wage garnishment, referral to collection agencies or for litigation, and other collection or resolution methods authorized or required by law. The information also is maintained for the purpose of providing collection information about the debt to the agency collecting the debt, to provide statistical information on debt collection operations, and for the purpose of testing and developing enhancements to the computer systems which contain the records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, state, local or foreign agencies responsible for investigating or implementing, a statute, rule, regulation, order, or license;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Any Federal agency, state or local agency, U.S. territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial);

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to;

(i) Request for repayment by telephone or in writing;

(ii) Negotiation of voluntary repayment or compromise agreements;

(iii) Offset of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process;

(iv) Referral of debts to private collection agencies, to Treasury-designated debt collection centers, or for litigation;

(v) Administrative and court-ordered wage garnishment;

(vi) Debt sales;

(vii) Publication of names and identities of delinquent debtors in the media or other appropriate places; and

(viii) Any other debt collection method authorized by law;

b. To conduct computerized comparisons to locate Federal payments to be made to debtors;

c. To conduct computerized comparisons to locate employers of, or obtain taxpayer identifying numbers or other information about, an individual for debt collection purposes;

d. To collect a debt owed to the United States through the offset of payments made by states, territories, commonwealths, or the District of Columbia;

e. To account or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties;

f. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United States or who owes delinquent child support that has been referred to FMS for collection by administrative offset;

g. To develop, enhance and/or test database, matching, communications, or other computerized systems which facilitate debt collection processes; or

h. For any other appropriate debt collection purpose.

(5) The Department of Defense, the U.S. Postal Service, or other Federal agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals receiving Federal payments including, but not limited to, salaries, wages, and benefits), which may include the disclosure of information contained in the records for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or other offset procedures;

(6) The Department of Justice for the purpose of litigation to enforce collection of a delinquent debt or to obtain the Department of Justice's concurrence in a decision to compromise, suspend, or terminate collection action on a debt;

(7) Any individual or other entity who receives Federal payments as a joint payee with a debtor for the purpose of providing notice of, and information about, offsets from such Federal payments; and

(8) Any individual or entity:

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:

(i) Administrative and court-ordered wage garnishment;

(ii) Report information to commercial credit bureaus;

(iii) Conduct asset searches;

(iv) Publish names and identities of delinquent debtors in the media or other appropriate places; or

(v) Debt sales;

b. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United States or who owes delinquent child support that has been referred to FMS for collection by administrative offset; or

c. For any other appropriate debt collection purpose. Disclosure to consumer reporting agencies including for the provision of routine debt collection services by an FMS contractor subject to the same limitations applicable to FMS officers and employees under the Privacy Act:

Debt information concerning a government claim against a debtor is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in computer processible storage media, such as computer hard drives, magnetic disc, tape; in file folders; and on paper lists and forms.

RETRIEVABILITY:

Records are retrieved by various combinations of name, taxpayer identifying number (*i.e.*, social security number or employer identification number), or debt account number.

SAFEGUARDS:

All officials access the system of records on a need-to-know basis only, as authorized by the system manager. Procedural and physical safeguards are utilized, such as accountability, receipt records, and specialized communications security. Access to computerized records is limited, through use of access codes, entry logs, and other internal mechanisms, to those whose official duties require access. Hard-copy records are held in steel cabinets, with access limited by visual controls and/or lock system. During normal working hours, files are attended by responsible officials; files are locked up during non-working hours. The building is patrolled by uniformed security guards.

RETENTION AND DISPOSAL:

Hard-copy records and electronic records shall be retained and disposed of in accordance with National Archives and Records Administration regulations (36 CFR Subchapter B—Records Retention); Treasury directives and FMS comprehensive records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Debt Management Services, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained. Federal and state agencies to which the debt is owed, Federal employing agencies and other entities that employ the individual, Federal and state agencies issuing payments, collection agencies, locator and asset search companies, credit bureaus, Federal, state or local agencies furnishing identifying information and/or address of debtor information, or from public documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.016

SYSTEM NAME:

Payment Records for Other Than Regular Recurring Benefit Payments—Treasury/Financial Management Service.

SYSTEM LOCATION:

The Financial Management Service, U.S. Department of the Treasury, Washington, DC 20227 and Hyattsville, MD 20782. Records maintained at Financial Centers in five regions: Austin, TX; Birmingham, AL; Kansas City, MO; Philadelphia, PA; and San Francisco, CA. Records also are located throughout the United States at Federal Reserve Banks which act as Treasury's fiscal agents. The address(es) of the fiscal agents may be obtained from the system managers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the intended recipients or recipients of payments from the United States Government, and for whom vouchers have been certified for payment by departments or agencies and sent to FMS for disbursement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payment records showing name, social security or employer identification number or other agency identification number, address, payment amount, date of issuance, check number and symbol or other payment identification number, routing number of the payee's financial institution and the payee's account number at the financial institution, vendor contract and/or purchase order, and the name and location number of the certifying department or agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 6166, dated June 10, 1933.

PURPOSE:

To facilitate disbursement of Federal monies to individuals by check or electronically, authorized under various programs of the Federal Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

- (1) Disclose to the banking industry for payment verification;
- (2) Disclose to Federal agencies, departments and agencies for whom payments are made, and payees;
- (3) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;
- (4) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;
- (5) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;
- (6) Disclose information to foreign governments in accordance with formal or informal international agreements;
- (7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;
- (8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;
- (9) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;
- (10) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;
- (11) Disclose information concerning delinquent debtors to Federal creditor agencies, their employees, or their

agents for the purpose of facilitating or conducting Federal administrative offset, Federal tax refund offset, Federal salary offset, or for any other authorized debt collection purpose;

(12) Disclose information to any State, Territory or Commonwealth of the United States, or the District of Columbia to assist in the collection of State, Commonwealth, Territory or District of Columbia claims pursuant to a reciprocal agreement between FMS and the State, Territory, Commonwealth or the District of Columbia;

(13) Disclose to the Defense Manpower Data Center and the United States Postal Service and other Federal agencies through authorized computer matching programs for the purpose of identifying and locating individuals who are delinquent in their repayment of debts owed to the Department or other Federal agencies in order to collect those debts through salary offset and administrative offset, or by the use of other debt collection tools;

(14) Disclose information to a contractor of the Financial Management Service for the purpose of performing routine payment processing services, subject to the same limitations applicable to FMS officers and employees under the Privacy Act; and

(15) Disclose information to a fiscal or financial agent of the Financial Management Service, its employees, agents, and contractors, or to a contractor of the Financial Management Service, for the purpose of ensuring the efficient administration of payment processing services, subject to the same or equivalent limitations applicable to FMS officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained in electronic or magnetic media and hard copy.

RETRIEVABILITY:

Records are retrieved by name, employer identification number (EIN) and social security number.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. Records are kept in limited access areas during duty hours and in locked cabinets at all other times. Records are password protected and are maintained in a building subject to 24-hour security.

RETENTION AND DISPOSAL:

Some records are retained for three years; other records for payments are

retained indefinitely. Records are retained in accordance with statute, court order or Treasury Directive 25-02, Records Disposition Management Program. Audit logs of transactions are retained for a period of six (6) months or as otherwise required by statute or court order. Records in electronic media are electronically erased using industry-accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Disbursing Officer, Financial Management Service; Chief Architect, Federal Finance, Financial Management Service; or, Director, ASAP Program Office, Federal Finance, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be sent to the Disclosure Officer at 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Federal departments and agencies responsible for certifying, disbursing and collecting Federal payments; Treasury fiscal and financial agents that process payments and collections; and commercial database vendors. Each of these record sources may include information obtained from individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.017**SYSTEM NAME:**

Collections Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Records are located at the Financial Management Service, U.S. Department of the Treasury, Liberty Center Building (Headquarters), 401 14th Street, SW., Washington, DC 20227. Records are also located throughout the United States at various Federal Reserve Banks and financial institutions, which act as Treasury's fiscal and financial agents. The address(es) of the fiscal and financial agents may be obtained from the system manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who electronically authorize payments to the Federal government through the use of communication networks, such as the Internet, via means such as Automated Clearing House (ACH), check conversion, credit card, and/or stored value card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Collections records containing information about individuals who electronically authorize payments to the Federal government to the extent such records are covered by the Privacy Act of 1974. The records may contain identifying information, such as an individual's name(s), taxpayer identifying number (*i.e.*, social security number or employer identification number), home address, home telephone number, and personal e-mail address (home and work); an individual's employer's name, address, telephone number, and e-mail address; an individual's date of birth and driver's license number; information about an individual's bank account(s) and other types of accounts from which payments are made, such as financial institution routing and account number; credit card numbers; information about an individual's payments made to or from the United States (or to other entities such as private contractors for the Federal government), including the amount, date, status of payments, payment settlement history, and tracking numbers used to locate payment information; user name and password assigned to an individual; other information used to identify and/or authenticate the user of an electronic system to authorize and make payments, such as a unique question and answer chosen by an individual; information concerning the authority of an individual to use an electronic system (access status) and the individual's historical use of the electronic system. The records also may contain information about the governmental agency to which payment is made and

information required by such agency as authorized or required by law.

The information contained in the records covered by FMS's proposed system of records is necessary to process financial transactions while protecting the government and the public from financial risks that could be associated with electronic transactions. It is noted that the proposed system covers records obtained in connection with various mechanisms that are either used currently or may be used in the future for electronic financial transactions. Not every transaction will require the maintenance of all of the information listed in this section. The categories of records cover the broad spectrum of information that might be connected to various types of transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; 31 U.S.C. chapter 33; 31 U.S.C. 3720

PURPOSE(S):

The purpose of this system is to maintain records about individuals who electronically authorize payments to the Federal government. The information contained in the records is maintained for the purpose of facilitating the collection and reporting of receipts from the public to the Federal government and to minimize the financial risk to the Government and the public of unauthorized use of electronic payment methods. Examples of payment mechanisms authorized electronically include ACH, check conversion, credit card, or stored value cards. Individuals may authorize payments using paper check conversion or Internet-based systems through programs such as "Pay.gov" and "Electronic Federal Taxpayer Payment System (EFTPS)."

The information also is maintained to:

(a) Provide collections information to the Federal agency collecting the public receipts;

(b) Authenticate the identity of individuals who electronically authorize payments to the Federal government;

(c) Verify the payment history and eligibility of individuals to electronically authorize payments to the Federal government;

(d) Provide statistical information on collections operations;

(e) Test and develop enhancements to the computer systems that contain the records; and

(f) Collect debts owed to the Federal government from individuals when the debt arises from the unauthorized use of electronic payment methods.

FMS's use of the information contained in the records is necessary to

process financial transactions while protecting the government and the public from financial risks that could be associated with electronic transactions. The records are collected and maintained for three primary reasons. First, in order to process a payment electronically, a payor needs to submit his or her name and bank account or credit card account information. Without such information, FMS would not be able to process the payment as requested by the individual authorizing the payment. Second, to authenticate the identity of the person initiating the electronic transaction, FMS may, in some instances, require some or all of the information described in "Categories of records in the system," above, depending upon the level of risk associated with a particular type of transaction. Third, to verify the financial and other information provided by the person initiating the electronic transaction and to evaluate the payor's ability to make the payment authorized, FMS may compare information submitted with information available in FMS's electronic transaction historical database or commercial databases used for verification purposes, much like a store clerk determines whether someone paying by paper check has a history of writing bad checks. The ability to research historical transaction information will help eliminate the risk of fraudulent activity, such as the purchase of government products using an account with insufficient funds or using a stolen identity. By collecting and maintaining a certain amount of unique personal information about an individual who purchases goods from the government, FMS can help ensure that the individual's sensitive financial information will not be fraudulently accessed or used by anyone other than the individual.

In addition, the information contained in the covered records will be used for collateral purposes related to the processing of financial transactions, such as collection of statistical information on operations, development of computer systems, investigation of unauthorized or fraudulent activity related to electronic transactions, and the collection of debts arising out of such activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the

violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license, but only if the investigation, prosecution, enforcement or implementation concerns a transaction(s) or other event(s) that involved (or contemplates involvement of), in whole or part, an electronic method of collecting receipts for the Federal government. The records and information may also be disclosed to commercial database vendors to the extent necessary to obtain information pertinent to such an investigation, prosecution, enforcement or implementation.

(2) Commercial database vendors for the purposes of authenticating the identity of individuals who electronically authorize payments to the Federal government, to obtain information on such individuals' payment or check writing history, and for administrative purposes, such as resolving a question about a transaction. For purposes of this notice, the term "commercial database vendors" means vendors who maintain and disclose information from consumer credit, check verification, and address databases.

(3) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a subpoena, where arguably relevant to the litigation, or in connection with criminal law proceedings.

(4) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(5) Fiscal agents, financial agents, financial institutions, and contractors for the purpose of performing financial management services, including, but not limited to, processing payments, investigating and rectifying possible erroneous reporting information, creating and reviewing statistics to improve the quality of services provided, conducting debt collection services, or developing, testing and enhancing computer systems.

(6) Federal agencies, their agents and contractors for the purposes of facilitating the collection of receipts, determining the acceptable method of collection, the accounting of such receipts, and the implementation of programs related to the receipts being collected.

(7) Federal agencies, their agents and contractors, credit bureaus, and employers of individuals who owe delinquent debt for the purpose of garnishing wages only when the debt

arises from the unauthorized use of electronic payment methods. The information will be used for the purpose of collecting such debt through offset, administrative wage garnishment, referral to private collection agencies, litigation, reporting the debt to credit bureaus, or for any other authorized debt collection purpose.

(8) Financial institutions, including banks and credit unions, and credit card companies for the purpose of collections and/or investigating the accuracy of information required to complete transactions using electronic methods and for administrative purposes, such as resolving questions about a transaction.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a government claim against a debtor when the debt arises from the unauthorized use of electronic payment methods is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of a delinquent debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in electronic media.

RETRIEVABILITY:

Records are retrieved by account number (such as financial institution account number or credit card account number), name (including an authentication credential, *e.g.*, a user name), social security number, transaction identification number, or other alpha/numeric identifying information.

SAFEGUARDS:

All officials access the system of records on a need-to-know basis only, as authorized by the system manager after security background checks. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, are utilized. Accountability and audit logs allow systems managers to track the actions of every user of the system. Each user has an individual password (as opposed to a group password) for which he or she is responsible. Thus, a system manager can identify access to the records by user. Access to computerized records is limited, through use of encryption, access codes, and other internal mechanisms, to those whose official duties require access. Storage facilities are secured by various means

such as security guards, locked doors with key entry, and limited virtual access requiring a physical token.

RETENTION AND DISPOSAL:

Records for payments and associated transactions will be retained for seven (7) years or as otherwise required by statute or court order. Audit logs of transactions will be retained for a period of six (6) months or as otherwise required by statute or court order. Records in electronic media are electronically erased using industry-accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Architect, Electronic Commerce, Federal Finance, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access to or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained (or by his or her authorized representative), other persons who electronically authorize payments to the Federal government, Federal agencies responsible for collecting receipts, Federal agencies responsible for disbursing and issuing Federal payments, Treasury fiscal and financial agents that process collections, and commercial database vendors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05-11675 Filed 6-13-05; 8:45 am]

BILLING CODE 4810-35-U

DEPARTMENT OF THE TREASURY**Fiscal Service****Surety Companies Acceptable on Federal Bonds: Name Change—Ranger Insurance Company**

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570; 2004 Revision, published July 1, 2004, at 69 FR 40224.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6915.

SUPPLEMENTARY INFORMATION: Ranger Insurance company, a Delaware corporation, has formally changed its name to Fairmont Specialty Insurance

Company, effective May 5, 2004. The Company was last listed as an acceptable surety on Federal bonds at 69 FR 40253, July 1, 2004.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Fairmont Specialty Insurance Company, Wilmington, Delaware. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of \$8,404,000 established for the Company as of July 1, 2004, remains unchanged until June 30, 2005.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the company remains qualified (31 CFR part 223). At list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving

officers should annotate their reference copies of the Treasury Circular 570, 2004 Revision, at page 40236 to reflect this change.

The Circular may be viewed and downloaded through the Internet at <http://www.fms.treas.gov/c570>. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC telephone (202) 512-1800. When ordering the Circular from GPO, use the following stock number: 769-004-04643-2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: June 8, 2005.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 05-11701 Filed 6-13-05; 8:45 am]

BILLING CODE 4810-35-M



Federal Register

**Tuesday,
June 14, 2005**

Part II

Environmental Protection Agency

40 CFR Parts 63, 268, et al.

**Waste Management System; Testing and
Monitoring Activities; Final Rule: Methods
Innovation Rule and SW-846 Final Update
IIB; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 63, 258, 260, 261, 264, 265, 266, 268, 270, 271, and 279****[RCRA-2002-0025; FRL-7916-1]****RIN 2050-AE41****Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW-846 Final Update IIIB****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency is amending a variety of testing and monitoring requirements in the Resource Conservation and Recovery Act (RCRA) hazardous and non-hazardous solid waste regulations and for certain Clean Air Act (CAA) regulations that relate to hazardous waste combustors. These amendments allow more flexibility when conducting RCRA-related sampling and analysis by removing from the regulations a requirement to use the methods found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW-846," in conducting various testing and monitoring and by limiting required uses of an SW-846 method to circumstances where the method is the only one capable of measuring the particular property (*i.e.*, the method is used to measure a required method-defined parameter). This action is an important step forward in implementing the use of a performance-based approach, which is part of the Agency's efforts toward Innovating for Better Environmental Results. Additionally, the Agency is making certain other clarifications and technical amendments. These changes

should make it easier and more cost effective to comply with the affected regulations, without compromising human health or environmental protection.

DATES: This final rule is effective on July 14, 2005. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 14, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA-2002-0025. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information for which 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 OSWER RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: For information on this rulemaking, contact Kim Kirkland at: Office of Solid Waste (5307W), U. S. Environmental Protection Agency, 1200 Pennsylvania Avenue, SW., Washington, DC 20460-0002, (703) 308-8855, e-mail address: kirkland.kim@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. Does This Action Apply to Me?**

You may be covered by this action if you conduct waste sampling and analysis for Resource Conservation and Recovery Act (RCRA)-or National Emission Standards for Hazardous Air Pollutants (NESHAP)-related activities. Covered entities include anyone who generates, treats, stores, or disposes of hazardous or nonhazardous solid waste and is subject to RCRA subtitle C or D sampling and analysis requirements; and entities subject to NESHAP final standards for hazardous waste combustors (40 CFR part 63, subpart EEE). All types of industries, governments, and organizations may have entities that generate or manage RCRA-regulated hazardous and nonhazardous solid wastes and may be subject to RCRA-related sampling and analysis requirements.

To determine whether your facility, company, business organization, etc., is covered by this action, you should carefully examine the applicability criteria in part 63 and in parts 258 through 299 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult your regulatory authority.

B. How Do I Obtain Copies of SW-846?

The Third Edition of SW-846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, and IIIB will be available in pdf format on the Internet at <http://www.epa.gov/SW-846>. A paper copy of Final Update IIIB is also located in the docket for this rule (see section I.A above). Table 1 below provides sources for both paper and electronic copies of the Third Edition of SW-846 and all of its updates.

TABLE 1.—SOURCES FOR SW-846, THIRD EDITION, AND ITS UPDATES

Source	Available portions of SW-846
Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, phone (202) 512-1800, toll free (866) 512-1800, fax orders (202) 512-2250, and online: http://bookstore.gpo.gov .	—Paper copies of the SW-846, Third Edition, basic manual and of certain updates, including Final Updates, I, II, IIA, IIB, III, and IIIB and Draft Update IVA. The subscriber must integrate the updates.
National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847.	—Paper copy of an integrated version of SW-846, Third Edition, as amended by Final Updates, I, II, IIA, IIB, III, and IIIA. —Individual paper copies of the SW-846, Third Edition, basic manual and of certain updates, including Final Updates I, II, IIA, IIB, III, IIIA, and IIIB and Draft Updates IVA and IVB. —CD-ROM of integrated version of SW-846, Third Edition, as amended by Final Updates I, II, IIA, IIB, and III (pdf and WordPerfect electronic copies). —CD-ROM of Draft Update IVA (pdf and WordPerfect electronic copies).
Internet: http://www.epa.gov/SW-846	—Integrated version of SW-846, Third Edition, as amended by Final Updates I, II, IIA, IIB, III, IIIA, and IIB (pdf electronic copy). —Draft Update IVA (pdf electronic copy). —Draft Update IVB (pdf electronic copy).

C. What Is the Legal Authority for This Action?

We are promulgating the part 258, 260, 261, 264–266, 268, 270, 271, and 279 regulations under the authority of sections 1006, 2002(a), 3001–3007, 3010, 3013–3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended. We are promulgating the part 63 regulation under the authority of sections 112 and 114 of the Clean Air Act.

D. How Is the Rest of This Preamble Organized?

II. Summary of Today's Rule

III. Background and Purpose of Action To Reform RCRA-Related Testing and Monitoring

- A. Public Comments Regarding How to Determine if a Method Is Appropriate
 - B. Public Comments Regarding Other Approaches
 - C. Public Comments Regarding Impacts From Removal of Required Uses of SW-846 Methods
- #### IV. Regulatory Revisions Involving Removal of SW-846 Requirements
- #### V. Editorial Corrections to SW-846 References in the RCRA Testing and Monitoring Regulations
- #### VI. Action to Withdraw the Reactivity Interim Guidance from SW-846 Chapter Seven and Remove Required SW-846 Reactivity Analyses and Threshold Levels from Conditional Delistings
- #### VII. Clarifications to Corrosivity and Ignitability Hazardous Waste Characteristics
- A. Revision to § 261.22(a)(2) to Clarify that SW-846 Method 1110A Is the SW-846 Standardized Version of the NACE Standard Specified for Corrosivity Characteristic Testing
 - B. Revisions to § 261.21(a)(1) to Remove an Unnecessary Referral to Method Equivalency Petitions; and an Explanation regarding the Decision to Not Revise the Regulation to Include the Updated ASTM Standards and References to Methods 1010A and 1020B as Proposed
- #### VIII. Availability of Final Update IIIB and Status of Final Update IV to SW-846
- #### IX. Addition of Method 25A to §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv)
- #### X. Removal of Requirements from § 63.1208(b)(8)(i) and (ii) in the NESHAP Standards to Demonstrate Feedstream Analytes Are Not Present at Certain Levels
- #### XI. Status of the RCRA Waste Sampling Draft Technical Guidance
- #### XII. State Authorization Procedures
- A. Applicability of Federal Rules in Authorized States
 - B. Authorization of States for Today's Rule
 - C. Abbreviated Authorization Procedures
- #### XIII. 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 Risks and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

II. Summary of Today's Rule

On October 30, 2002 (67 FR 66251–66301), the Environmental Protection Agency (EPA) proposed to amend the testing and monitoring requirements under the hazardous and nonhazardous solid waste regulations, and a testing requirement under the Clean Air Act (CAA) in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste combustors. EPA is finalizing those regulatory revisions at this time. Some of the public comments are summarized and addressed in the sections to follow, and a background document containing our responses to all public comments can be found in the docket to this rule, RCRA–2002–0025. After consideration of all comments and for the reasons summarized in today's rule, we are finalizing the following actions:

1. Reforming RCRA-related testing and monitoring by restricting requirements to use SW-846 to only those situations where the method is the only one capable of measuring the property (*i.e.*, it is used to measure a method-defined parameter). This will allow more flexibility in RCRA-related sampling and analysis by removing unnecessary required uses of SW-846.
2. Withdrawing the cyanide and sulfide reactivity guidance from sections 7.3.3 and 7.3.4 of SW-846 Chapter Seven and withdrawing required uses of reactive cyanide and sulfide methods and threshold levels from conditional delistings.

3. Amending the regulations for the ignitability and corrosivity hazardous waste characteristics. As part of this, we are clarifying in § 261.22(a)(2) that SW-846 Method 1110A, "Corrosivity Toward Steel," is the "standardized" (as described in § 261.22(a)(2)) SW-846 method that is required to be used to determine the characteristic of corrosivity for steel. We are also removing the unnecessary reference to equivalency petitions in the ignitability

characteristic at § 261.21(a)(1). However, regarding the methods required for the determination of flash point under the characteristic of ignitability, the Agency decided not to replace the standard test methods ASTM D 3278–78 and D 93–79 with the latest versions of those methods.

4. Incorporating by reference Update IIIB to SW-846, which includes the revised Chapter Seven, and eleven revised methods, including method revisions to remove a requirement to use the SW-846 Chapter Nine, "Sampling Plan."

5. Adding Method 25A as an analytical option to analyses conducted in support of air emission standards for process vents and/or equipment leaks at treatment, storage, and disposal facilities.

6. Removing a requirement to demonstrate that feedstream analytes are not present at levels above the 80% upper confidence limit above the mean for sources subject to NESHAP: Final Standards for Hazardous Waste Combustors.

7. Removing from the regulations unnecessary references to SW-846, which do not affect the intent of the RCRA regulation.

This rule does not add any additional requirements to the regulations. Instead, this rule removes the requirement to use SW-846, and it clarifies what the Agency believes should be considered during the selection of other appropriate methods. Our purpose for the regulatory revisions is to make it easier and more cost effective to comply with the RCRA regulations by allowing more flexibility in method selection and use. If you prefer, where you find that a specific SW-846 method yields data that is suitably effective for demonstrating compliance in the particular matrix being analyzed, you can still use the SW-846 methods.

III. Background and Purpose of Action to Reform RCRA-Related Testing and Monitoring

Typically, the hazardous and nonhazardous solid waste RCRA regulations for testing and monitoring activities or the permits or waste analysis plans of facilities regulated by RCRA specify the analytes of concern to be determined in a matrix of concern at a particular regulatory level of concern. Additionally, some recently promulgated regulations specify the confidence level of concern. Most of the RCRA regulations leave the how (*i.e.*, which test method to use) up to the regulated community. Some RCRA regulations, however, specify the use of methods from the EPA publication

“Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” also known as “SW-846.”

Initially, EPA issued SW-846 in 1980 soon after the first RCRA regulations were published. At that time, we intended that SW-846 serve two roles. First, the Agency intended that it serve as a guidance manual of generally appropriate and reliable analytical methods for RCRA-related testing and monitoring. Second, we intended that it serve as a readily-available source of those few analytical methods which were required in order to comply with the RCRA regulations. Since that time, EPA published regulations that required the use of SW-846 methods in general. Subsequently, members of the regulated public made it clear to EPA that they would like the opportunity to use other reliable methods, and EPA also decided that some of the SW-846 requirements were not necessary.

The regulatory requirement to use SW-846 in general (e.g., as in the delisting regulations at § 260.22 prior to this final rule) did not identify specific SW-846 methods. Rather, this requirement typically included the regulation of many different analytes which could be determined by many different methods. Almost every update to SW-846 includes at least one method that may be applicable to one or more of these general analytical requirements. Therefore, whenever SW-846 was updated to revise or add methods, EPA had to incorporate by reference all of the new and revised methods into the RCRA regulations as part of a rulemaking. EPA issued the updates as a proposed rule, requested public comment, and then promulgated the update in a final rule. This lengthy process delayed the timely use of the new analytical technologies.

On October 30, 2002 (67 FR 66251–66301), EPA proposed to remove from the regulations a requirement to use a method found in SW-846, except when that method is the only one capable of measuring the particular property. At that time, we described our reasons for wanting to remove this requirement from the regulations, including the Agency’s desire to fully implement a performance-based measurement system (PBMS) in the RCRA program. Specifically, we noted that such a change would: (1) Allow the regulated community more flexibility in method use during RCRA-required testing; (2) stimulate the development and timely use of innovative and more cost-effective monitoring technologies and approaches in the RCRA program; (3) allow more efficient and timely releases of SW-846 methods by decoupling most of the methods from required uses in the

RCRA regulations; and (4) make the RCRA program more effective by focusing on measurement objectives rather than on measurement technologies. As noted, the Agency proposed to restrict the requirement to use a specific SW-846 method to only those situations where its particular procedure is the only one that is capable of measuring the property (i.e., a method-defined parameter, or MDP). For example, to determine whether the levels of hazardous constituents in a particular waste stream are equal to or greater than the toxicity characteristic (TC) levels specified in § 261.24, waste generators must test their waste using SW-846 Method 1311, the “Toxicity Characteristic Leaching Procedure,” or “TCLP.” If levels in the waste are greater than or equal to the TC levels, the waste is a hazardous waste and is subject to the RCRA hazardous waste regulations. This is the only reliable method for determining whether TC levels are met. Thus, testing of any material to determine whether it meets the Toxicity Characteristic levels must be done using the TCLP. EPA describes the measurement obtained from the TCLP, as well as from certain other methods, as a required “method-defined parameter.”

We requested public comment on the proposed revisions to the RCRA regulations, although not to the method-defined parameters, and received comments on the proposed action from over 20 different commenters, which included representatives of Federal Government agencies, State Government agencies, industry, waste generation and management entities, and analytical laboratories. The majority (86%) of the commenters generally supported, with comment, the MIR action and EPA’s efforts to allow more flexibility in method selection when conducting RCRA-related sampling and analysis. Regarding the positive comments, one commenter, a state agency representative, applauded EPA for recognizing that regulating does not have to be prescriptive. Another commenter, a representative of analytical laboratories, believed that the additional flexibility will result in data quality improvements. Two representatives of waste generation or management entities concurred with EPA that the majority of the MIR revisions should make it easier and more cost effective to comply with RCRA-related regulations.

For the most part, the negative public comments may have reflected a misunderstanding of certain important aspects and premises of the MIR, which we are clarifying in our responses to

those comments. With respect to other negative comments, the Agency expects that the discussion below will further clarify the purposes and premises of the MIR, and will clarify options for dealing with the inherent flexibility of this approach. Also, the Agency will continue to provide training on the concepts of this rule to further clarify its intent and support its implementation. You will find a background document containing our complete responses to all relevant public comments in the docket to this rule, docket number RCRA–2002–0025, at the location listed above under **ADDRESSES**. Some of the public comments are also addressed within this preamble to the final rule.

Based on our review of the public comments regarding the October 30, 2002 proposed rule, we are proceeding with publication of this final rule, which finalizes the proposed revisions to the RCRA regulations. That is, this rule removes unnecessary required uses of SW-846 in general and it removes any unnecessary required uses of specific SW-846 methods. Other reliable methods can now be used by the regulated public for compliance with the affected regulations. This action also encourages the timely use of new and innovative methods outside of SW-846 in that, for most sampling and analysis scenarios, it will not be necessary to submit an equivalency petition when using a non-SW-846 method. However, some regulations will still require use of a specific SW-846 method when that method is for determination of a RCRA-required method-defined parameter (MDP); in those cases, a regulated entity has to submit an equivalency petition and receive approval of that petition from the Agency before an alternative method can be used.

This final rule will allow the Agency to make final updates to SW-846 available in a more timely manner. For example, soon after publication of this document, we will announce the availability of Final Update IV (see section VIII of this document). The methods of Final Update IV did not have to go through the rulemaking process because, with publication of this final rule, SW-846 is no longer required in general by any existing RCRA regulation and none of the new or revised methods in Update IV are specifically required by any RCRA regulation for the analysis of method-defined parameters (MDPs). However, we did solicit and consider public comments on the methods through **Federal Register** notices, see 63 FR 25430–25438, May 8, 1998 (Draft

Update IVA), and 65 FR 70678–70681, November 27, 2000 (Draft Update IVB).

A. Public Comments Regarding How To Determine if a Method Is Appropriate

In section III.A of the preamble to the October 30, 2002 proposed rule, we discussed our proposed revisions to remove the requirement to use SW–846 methods by adding regulatory language allowing the use of appropriate methods such as those found in SW–846 or other reliable sources. In the preamble of the proposed rule, we provided guidance on how to determine if a method is appropriate for its analytical purpose. Specifically, we mentioned that such a method might be one published by EPA in a different manual or regulation or published by another government agency, a voluntary standards setting organization, or other well-known sources. We also proposed to retain mention of the SW–846 methods in the regulations as guidance and as examples of methods that could be appropriate.

In the proposed rule preamble, we gave two primary considerations in selecting an appropriate method, which together serve as our general definition of an appropriate method. As done in the preamble to the proposed rule, the text to follow explains each of these concepts and identifies other guidance that may be helpful to the regulated community.

1. Appropriate methods are reliable and accepted as such in the scientific community.

2. Appropriate methods generate effective data.

Regarding the first consideration, we noted that methods which are reliable and accepted in the scientific community might include those published by the Agency or other government entities using techniques that have documented reliability. SW–846 methods, for example, are reviewed by a technical workgroup composed of national expert-level chemists who provide peer input and determine whether method reliability is sufficiently documented. The technical reliability and acceptance of other methods published by other governmental or non-governmental organizations may also be documented, especially if the methods are subjected to some form of objective scientific review. For instance, to qualify for recognition as having developed a voluntary consensus standard (*e.g.*, analytical method) under the National Technology Transfer & Advancement Act of 1995 (NTTAA), an organization must produce standards by consensus, observe the principles of openness and

balance of interests, and provide due process, including an appeals process.

Regarding the second consideration in the identification of appropriate methods—generation of effective data—we described in the preamble to the proposed rule examples of tools that might be used in this determination. *This consideration is project-specific* and therefore the tools and criteria will be different for each analytical effort. As stated in the proposed rule preamble, effective data are data of sufficiently known and appropriate quality to be used in making project-specific decisions. An example of such a decision is whether a particular waste is hazardous because a constituent of concern is present above a level of concern. Before sampling and analysis begins, project planners should identify why the analysis is being done, how the data will be used, and how “good” the data has to be (*e.g.*, the quality objectives for the project as established through a systematic planning process). Effective data meet the quality objectives set by the project planners for the specific project. The quality objectives should be rationally and systematically identified during the planning of the project and development of the project-specific Quality Assurance Project Plan (QAPP), Waste Analysis Plan (WAP), Sampling and Analysis Plan (SAP), or other appropriate systematic planning document. Sampling and analysis documentation should be sufficient to confirm that the data are effective and that the selected method is appropriate.

Quality objectives generally refer to the necessary quality of the overall decision to be made or, in other words, the tolerable error (*i.e.*, acceptable level of uncertainty for the decision). For example, a quality objective for waste analysis may be that one must demonstrate that an analyte is not present above the reported level at the 80 percent upper confidence around the mean, and that the method could have detected the presence of the analyte at that level and confidence limit. A quality objective may be specified in a regulation, a permit, a corrective action agreement, or other regulatory or enforcement document. Sometimes you must consider a quality objective regulatory specification when selecting an appropriate method. For example, the RCRA comparable fuels’ provisions include quality objectives in lieu of naming the use of specific methods (see 63 FR 33781, June 19, 1998). You can find guidance on the development of formal data quality objectives (DQOs) in EPA’s “Guidance for the Data Quality Objectives Process” (EPA QA/G–4)

found at EPA’s Quality Staff’s Web site (<http://www.epa.gov/quality/>), in Chapter One, “Quality Control,” of SW–846, and in ASTM D 5792, “Standard Practice for Generation of Environmental Data Related to Waste Management Activities: Development of Data Quality Objectives.” You may also use other scientifically valid systematic planning processes for developing quality objectives based on specific project needs.

In the project planning document, you should identify the types of quality control (QC) concepts (*e.g.*, spike recovery analyses, blanks, etc.) you will use to determine if you meet your objectives. For example, selection of an appropriate method is sometimes demonstrated by adequate recovery of spiked or surrogate analytes and reproducible results, or through successful analysis of a standard reference material of a matrix-type analogous to that of the actual sample matrix. The method may not be appropriate for its intended use if your data show inadequate recovery of an analyte at a level that impairs a decision regarding whether the analyte is present at or below its regulatory level. Such a method would not generate effective data. Based on your QC data, you should determine whether the method generates results that are sufficiently sensitive, unbiased, and precise to demonstrate compliance with the subject regulation.

However, you should not just focus on controlling or documenting analytical quality, because regulatory decisions are also susceptible to error due to sampling procedures. If the contaminant variability is not properly addressed during the planning and collection of samples, an incorrect decision could be reached even though the method performed well in terms of laboratory quality control. No matter how accurate or precise the laboratory analysis, the data will provide misleading information if excessive error is introduced by improper sampling procedures. Guidance on identifying the necessary quality control procedures and on minimizing the potential for both analytical and sampling error can be found at the EPA Quality Staff’s Web site (<http://www.epa.gov/quality/>) or in Chapters One, Two, and Nine of SW–846. In addition, guidance on determining and demonstrating the appropriateness of a selected measurement method for a particular application may be found in ASTM D 6956–03, “Standard Guide for Demonstrating and Assessing Whether a Chemical Analytical Measurement

System Provides Analytical Results Consistent with Their Intended Use.”

Finally, EPA noted in the proposed rule preamble that you should identify appropriate methods for a specific project *before* sampling and analysis begins. As the regulated entity, you are ultimately responsible for compliance with a particular regulation. Therefore, you should not rely on the laboratory or other project participant to select an appropriate method. We recommend that you consult with your regulating authority during identification of performance goals and the selection of appropriate methods.

We requested and received public comment on the above considerations and on the proposal to allow the use of appropriate methods such as those found in SW-846 or other reliable sources. One supportive commenter believed the Agency had provided sufficient guidance in the preamble to the proposed rule on how to identify appropriate methods. As discussed below, a few commenters requested additional guidance regarding the selection of appropriate methods or had questions regarding the approach.

One commenter requested that an appropriate method definition be codified in the regulations. The Agency believes that codification of an appropriate method definition would be both very difficult and contrary to the intent and purpose of this rule, given the project-specific nature of “appropriate method selection” and the wide variety of data collection objectives that may be encountered. In the paragraphs above, the Agency has provided the key generic considerations for appropriate method selection, which together serve as our general definition for an appropriate method, and identified guidance sources, in the hope that this information will assist readers of this rule during the selection of appropriate methods, regardless of whether the methods are from SW-846 or other sources. In addition, since publication of the proposed rule, ASTM International published D 6956-03, “Standard Guide for Demonstrating and Assessing Whether a Chemical Analytical Measurement System Provides Analytical Results Consistent with Their Intended Use.” This guidance document is not required by any EPA program, but may be useful to the regulated community during the selection of appropriate methods and during the evaluation of analytical results. The document can be obtained from ASTM by visiting its Web site at <http://www.ASTM.org> or by writing to: ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West

Conshohocken, PA 19418-2959. EPA also plans to continue to provide training to affected entities on the concepts of this rule and to support its implementation. When using any appropriate method, you should be able to determine the analyte of concern (e.g., the regulated constituent to be measured), in the matrix of concern (e.g., the physical substance which might contain the regulated constituent), at the level of concern (e.g., the regulated level of or the action level for the analyte).

One commenter was concerned that the regulated public might use other methods that do not meet the QC criteria in the SW-846 methods. The Agency does not believe that this should be a concern. The performance data and QC criteria given in the SW-846 methods are only examples, and are not requirements for analysis. The SW-846 example criteria may not be appropriate for every analytical purpose. Establishing QC criteria is a project planning issue and not a method issue. Methods should be adapted into standard operating procedures (SOPs) to meet QC criteria from systematic planning documents, not the other way around. Some analytical applications may require more or less stringent QC criteria than that given as examples in the SW-846 methods, and it would be contrary to promoting a PBMS approach if all analyses using any methods are expected to conform to the example criteria published in SW-846 methods. Sometimes, even when using an SW-846 method, it may not be necessary to fully meet its example performance criteria because project-specific quality objectives may not require evaluation of the same performance indicators or the criteria may not be appropriate to the specific application. In keeping with a PBMS approach and the goals of this rule, performance criteria should be determined on a project-specific basis during the planning stage.

Another commenter was concerned that some regulated entities might use methods that were not originally developed for environmental purposes, and thus data validity may be suspect. Provided that the method is appropriate based on the factors discussed above and in the proposed rule preamble, we do not believe that this should be a concern. If the data are suspect or otherwise not of sufficient quality for their intended use, then the method is not appropriate, regardless of its source, and thus the data are not acceptable for demonstrating compliance. Regardless of the original purpose or source of a method, it can be an appropriate method if it generates effective data,

e.g., the data quality objectives and performance criteria are met. Even an SW-846 method may not be appropriate for a particular application if it does not generate effective data. In addition, the application of method technologies from other disciplines promotes the use of innovative approaches and technologies, which may benefit RCRA-related analyses. Finally, many of the analytical techniques used today in environmental analyses were initially developed for other purposes.

One commenter agreed with EPA’s approach to appropriate method selection, but had comments regarding the data quality objectives approach. The commenter believed that the DQO approach can be expensive and is not usually used during small analytical projects. In response, the Agency notes that, when data are being used in decision making involving two clearly alternative conditions (e.g., compliance vs. noncompliance with a regulatory standard), the Agency’s recommended systematic planning tool is the DQO process. While there is no regulatory obligation to use the DQO process, it is the recommended planning approach for many EPA data collection activities. However, the DQO process may be too complicated for some projects and is not the only way to generate quality data through systematic planning. It is presented here in the MIR only as an example of an approach involving systematic planning. However, at a minimum, the Agency recommends that some form of systematic planning be implemented for every data collection effort in order to generate effective data, and notes that such systematic planning should also involve consideration of cost. Systematic planning is a common sense approach, designed to ensure that the level of detail in planning is commensurate with the importance and intended use of the work and the available resources.

One commenter supported EPA’s proposed flexibility, but thought that EPA should continue to use SW-846 as the primary vehicle for making recommendations regarding procedures that will meet minimum quality objectives for RCRA analyses. Thus, one would not be required to use SW-846 methods, but could choose to use them and be confident that they are appropriate sampling and analysis procedures, provided that they can be demonstrated to meet project quality objectives. Another commenter believed that it would be unrealistic for a regulated entity to agree to the use of other methods if EPA has not approved them. The commenter believed that such approval would guarantee

acceptance of the data, provided that the method was properly followed.

First, it should be noted that there are no "PBMS methods." PBMS is a regulatory approach where what has to be accomplished is specified, rather than how the monitoring is to be conducted. Under such a system, regulated entities are permitted to employ any method that is technically adequate to accomplish the compliance demonstration. Regarding EPA's approval of PBMS, EPA has already stated its objective to employ the performance approach in its regulatory and other monitoring programs to the extent feasible. On October 6, 1997 (62 FR 52098–52100), EPA published in the **Federal Register** its intent to adopt PBMS agency-wide. Subsequently, on May 8, 1998 (63 FR 25430–25438), EPA published in the **Federal Register** a notice of intent and request for comment regarding its plans to reform implementation of RCRA-related monitoring by formally adopting PBMS and by removing unnecessary required uses of methods from the RCRA regulations (part of PBMS).

EPA also believes that method selection should be a project-specific decision and therefore cannot recommend or approve any methods—even SW-846 methods—as always being appropriate for any given application. For that very reason, with this rule, EPA removed the requirement to use SW-846 methods, except when the methods are the only ones capable of measuring a particular property. Relying on the fact that a method is contained in SW-846 does not guarantee that the method will always generate effective data under any situation. If the SW-846 method is not an appropriate method for its intended application, following it exactly could generate erroneous data and could fail to demonstrate compliance with the RCRA requirements.

Second, EPA does not agree with the recommendation that it categorically state that any method is always an effective means of demonstrating compliance (with the exception of methods for the analysis of method-defined parameters) since the Agency has no way of knowing that a particular method is going to yield valid data in all potential situations and it goes counter to the performance approach which requires that regulated entities demonstrate compliance using data of known and documented quality. The Agency believes that it is up to the individual regulated entity to decide which methods are appropriate to use for any given compliance demonstration and that this determination should be initiated during the project planning

stage. When considering method selection, the analytical performance indicators are key to the specific project goals that should be considered. Examples of analytical performance indicators that might be addressed include method sensitivity and selectivity, precision, bias, and reproducibility. The data user may even choose to revise method selection if additional information gathered during the project indicate that the initial selection was not appropriate. Therefore, method selection is a project-specific activity implemented by the regulated entity, and EPA's only concern is that the generated data be effective for its purpose, regardless of the method selection. The Agency does recommend that a regulated entity seek assistance from its regulating authority should the regulated entity have concerns regarding the use of any particular method. EPA also notes that guidance regarding demonstrating the performance of a given analytical method can be found in EPA-published guidance documents (some of which are listed above) and documents published by other Agencies (e.g., ASTM).

One commenter was concerned regarding how method performance would be demonstrated under PBMS. The commenter claimed that implementation of a PBMS approach is very difficult and that, for it to work, there must be a "reference method" to be used as a benchmark against which to measure other methods.

EPA notes that the RCRA program does not use reference methods. Many different methods produce effective data for a particular project, which are not necessarily "equivalent," but all could be "applicable." For example, there are many analytical methodologies that can be used in analyzing a particular metal species (e.g., ICAP, AA). In selecting a particular method for metal analysis, the analyst will consider analytical costs, accuracy and sensitivity needed, freedom from potential interferences, amount of sample required for an analysis, reagents to be used, and other factors in the overall process to select a method that will yield effective data at the lowest cost to the user. These factors should be considered when evaluating any method, including those published in SW-846, and the user needs to conduct the appropriate verifications to demonstrate the appropriateness of any method that is selected against its intended application. There are a number of approaches that can be used to demonstrate that a method is valid for a particular use. These include: use of appropriate reference standards, analysis of spiked samples, comparison

of results to results generated using a method that employs a fundamentally different measurement process and would not be subject to the same potential interferences, etc. For further guidance in demonstrating method validity, see the previously cited ASTM document D 6956–03, "Standard Guide for Demonstrating and Assessing Whether a Chemical Analytical Measurement System Provides Analytical Results Consistent with their Intended Use."

B. Public Comments Regarding Other Approaches

As explained in section III.B of the proposed rule preamble, EPA considered several approaches to promoting "method use" flexibility in the RCRA regulations. We selected the "appropriate method" approach because it is universally applicable to the subject RCRA regulations. It also requires only minimal revisions to the regulations for implementation.

In addition, the option to use "appropriate methods" is not new to the RCRA regulations. For example, use of the TCLP, SW-846 Method 1311, is required for determining whether a waste is hazardous for the toxicity characteristic (the TC). It generates an extract (the leachate) which is subject to a determinative analysis for comparison with the TC regulatory limits. However, the TCLP procedure does not require specific analytical methods for the leachate determinative analysis, nor does it specify the use of even SW-846 methods in general for such analysis of the leachate. It allows method flexibility similar to that proposed by this rule by stating in section 7.2.14: "The TCLP extract shall be prepared and analyzed according to appropriate analytical methods."

Nevertheless, in the proposed rule preamble, the Agency requested the public's opinion on two alternative approaches that we considered during development of this rulemaking.

1. As a variation to the "appropriate method" approach described above, should we remove mention of SW-846 methods as examples of potentially appropriate methods from the subject regulations?

2. In lieu of the "appropriate method" approach, should we instead add specific measures of required measurement system performance or data quality objectives to each regulation, such as done in the comparable fuel rulemaking, and not mention or require the use of an appropriate method (including any SW-846 methods)? In the proposed MIR, we did not select this approach because it

might require significant regulatory changes with difficult to quantify impacts.

Most of the commenters preferred that EPA retain mention of SW-846 in the regulations as examples of potentially appropriate methods. However, some of these commenters appeared to believe that, by mentioning SW-846 methods as examples, it meant that such methods will always be appropriate for every data collection effort addressed by the regulation, and thus the performance of other candidate methods should be compared with the performance of the similar SW-846 method. One commenter wanted the Agency to legally recognize that the SW-846 methods are appropriate methods under the RCRA regulations.

The Agency strongly disagrees with commenters that SW-846 methods should be identified as always appropriate. As explained in section III.A of this rule, the determination of an appropriate method should be made on a project-specific basis and involves consideration of various project-specific objectives and criteria. As noted, an appropriate method might be one published by EPA in a different manual from SW-846 or might be a method published by a different government agency, a voluntary standards setting organization, or other well-known scientific sources. Whether a method is contained in SW-846 is not a primary criterion for determining if a method is appropriate. For example, there is a common misconception that the different SW-846 methods for sample extraction all have the same extraction efficiency, which is not the case at all, since the methods were intended to be appropriate for different applications. Methods found in other publications may be more appropriate based on the project-specific considerations.

Regarding the addition of performance criteria to the regulations, a few commenters did prefer that such criteria be added to the regulations. However, these commenters did not provide suggestions regarding how to best resolve those instances when such an approach might result in requiring use of methods which are more accurate or sensitive than necessary (with the result that monitoring costs may increase unnecessarily) or in other cases would not yield data of a sufficient quality to definitively determine if a facility is in compliance with a regulatory or permit level. Given these impact issues and the project-specific nature of what determines an appropriate method, it would be contrary to the purpose of this rulemaking and very difficult to develop

and implement performance criteria and definitions that would be universally applicable. EPA therefore decided against adding criteria at this time to all of the regulations. We strongly believe that the appropriate method determination should be made on a project-specific basis by those familiar with the purpose of the analysis and should not be dictated by regulatory definition. EPA believes that generic performance criteria assigned by EPA would not assure consistent application of PBMS, but rather might discourage a PBMS application and flexibility in method selection and use. However, to further evaluate this issue, the Agency's Forum on Environmental Measurements (FEM) has formed an Action Team to address issues related to implementation of the performance approach. It is anticipated that the Action Team will address issues related to data quality and data quality documentation for use by all Agency programs.

In conclusion, as a result of consideration of all comments, we decided to not add performance criteria to the regulations. In addition, unlike the proposal, we decided to not include any references to SW-846 or "using appropriate methods such as those found in * * * SW-846" in the regulatory provisions because those references to SW-846 were unnecessary and, based on public comment, the regulated community may continue to believe that SW-846 methods will always be most appropriate.

C. Public Comments Regarding Impacts From Removal of Required Uses of SW-846 Methods

In the preamble to the proposed rule, we summarized the expected impacts on the regulated entities and the states, and requested public comment on the assumptions made in the analysis. We also requested public comment on the impact of this rule and how we might promote its successful implementation. The paragraphs to follow summarize our impact assumptions and provide our responses to some of the public comments regarding these topics.

As a result of this final rule, you can use any appropriate analytical test method in demonstrating compliance with the RCRA regulations, except for those regulatory provisions involving method-defined parameters. We believe that this action will not significantly or adversely impact the regulated community or other potentially affected parties because the Agency is not adding any additional regulatory requirements to the RCRA regulations, but rather is clarifying and expanding

the flexibility that regulated entities have had in selecting appropriate methods to employ to demonstrate compliance whether or not such methods were described in SW-846. By making it clear that one may use any appropriate method, regulated entities may be able to cut the cost of compliance monitoring by using less expensive methods. Regulated entities may continue to use SW-846 methods to demonstrate compliance when it is appropriate to do so, and thus experience no impact from this rulemaking. EPA will also continue to publish and update SW-846 methods and ensure their scientific soundness by following peer review guidelines and requesting public comment on the methods through **Federal Register** notices.

Thus, as we noted in section III.C of the proposed rule preamble, the primary impact of this rule will be better analytical results (e.g., due to paying better attention to method performance). The Agency also anticipates a tendency toward lower costs during compliance with the affected RCRA regulations because project planners may identify methods that are potentially less costly to use. Meanwhile, EPA also will continue to provide training and utilize our pool of Agency technical experts to serve the public by answering questions regarding the use of test methods during RCRA-related compliance activities.

Also, a demonstration that another method is appropriate is already allowed within RCRA-related sampling and analysis and will not involve much more than what regulated entities already should be doing. For example, as the regulated entity, you should already be setting method performance goals in your Quality Assurance Project Plan (QAPP), Sampling and Analysis Plan (SAP), or other systematic planning document and then evaluating compliance with those goals based on data quality indicators, including when using SW-846 methods.

Regarding public concerns about the comparability of data generated by different methods for the same purpose, we noted in the proposed rule preamble that this practice is not new because some regulations already allow the use of more than one method. We also do not believe that this should be a concern, provided that any alternative method is also an appropriate method as defined above. Specifically, if both methods generate effective data and meet the data quality objectives of the project, then results from both methods will be acceptable for demonstrating compliance. In addition, for situations where trends or comparability are to be

determined, measurement quality objectives should be selected for use in selecting methods to be used that will ensure that, for whatever desired level of difference one desires to determine, the data will be suitable for the purpose. This has always been EPA's approach in comparing data by different methods, and it is not affected or changed by this rule.

Some commenters preferred a more prescriptive approach in the regulations because method-specific requirements remove the burden of method-selection as it is believed that this translates into lower costs and greater agreement between permit writers and other project participants who may not have method-selection expertise. Because of consequences of this approach, the Agency believes it is undesirable. A major problem with the prescriptive-or mandated-methods approach is that it can lead to data of poor quality which can result in an incorrect assessment of compliance. Another problem is that the regulated community may not systematically plan their data collection efforts and thus not fully understand their project-specific goals. Method-selection decisions should be project specific and thus, specific methods should not be required in the regulations.

Some commenters also expressed concern regarding the impact of this rule on existing RCRA permits. RCRA permits are typically effective up to ten years. This rule will only effect new or reissued permits, and only to allow more flexibility in method selection. Therefore, RCRA permits will not be adversely impacted by this action.

Finally, this rule does not add new information collection or reporting requirements for regulated entities. Section 260.22(i) (reporting requirements for petitions to exclude wastes) and §§ 264.13(b) and 265.13(b) (reporting requirements for owners and operators of hazardous waste management facilities) provide sufficient reporting requirements to cover RCRA-related testing and analysis documentation regarding the use of other appropriate methods.

One commenter agreed, regarding impact of the rule, that the MIR will greatly benefit those situations where repeated analyses are needed, such as for a RCRA corrective action or for a WAP for a hazardous waste treatment, storage, or disposal facility (TSDF). However, the commenter also believed that smaller entities involved in waste analyses, such as small quantity generators (SQGs) will probably not benefit from the MIR. For the reasons given above, EPA believes that the

impact of this rule will not be significant for any generator, including small quantity generators (SQGs), largely because the flexibility of method selection will provide better analytical results at a lower cost. Project planners and laboratories used by SQGs will identify methods that are potentially less costly and yet provide effective data. EPA believes that the regulated community will choose appropriate methods based on cost and data quality advantages, and therefore all regulated entities, including SQGs, could benefit from this rule.

One other commenter believed that if PBMS is adopted, prior approval by the State or other regulator of the method should be mandatory. The commenter argued that State reviewers are more familiar with SW-846 methods and data indicators and that a state's unfamiliarity with other methods might mean the State may not perform a timely review of the data.

As explained in the previous section, EPA believes that method approval prior to use would be contrary to the intent and philosophy of the performance concept and would negate the positive impacts of this rule. However, as also noted, the regulated community can consult with their regulating authority during the identification of performance goals and the selection of appropriate methods. EPA appreciates the commenter's concern regarding potentially negative impacts on the timely review of data. It is true some delay in data review may occur if the reviewer is not familiar with the procedure. Nevertheless, review of data should not be a new step in the process since effected entities should already be reviewing data indicators from the SW-846 methods during RCRA-related sampling and analysis. Once the reviewer and user become more familiar with a new method, less time will be needed to perform an equally thorough review. In the end, we believe the benefits of modifying the rules will far outweigh these potential impacts on data review time through the improvement of data effectiveness and a decrease in other costs. To help mitigate any potential negative impacts, we will continue to provide training and our staff are available to assist you during all stages of the process.

Some commenters expressed a concern that this action will impose an additional resource burden on States. In response, we note that the regulatory changes in this rule are equivalent to or less stringent than the existing Federal regulations which they amend. Therefore, authorized States are not required to adopt and seek authorization

for this rulemaking within their programs. If a State believes that adoption may be too burdensome on their resources, then they need not adopt the revised regulations. Nevertheless, we encourage the adoption of these or similar revisions by authorized States in order to promote the national adoption of the performance approach in environmental regulations, permits, and monitoring. In addition, if States choose to adopt these revisions, the impact should not be significant since they already conduct method selection and data quality reviews to determine compliance with their testing and monitoring regulations.

Some commenters expressed a need for communication and training to assist in implementation of the MIR. We agree and the Agency plans to continue to provide education and training to States, EPA Regions, and the regulated community regarding the implementation of this rule, through such mechanisms as workshops, fact sheets, and Internet training modules. Over the past seven years, OSW has offered program-specific training (e.g., "Analytical Strategy for the RCRA Program: A Performance-Based Approach") for EPA Headquarters, Regional, and State personnel involved in RCRA activities that include sampling and analysis. The Agency plans to expand its performance approach training program and offer other courses on the evaluation of data and permit writing from a PBMS and effective data standpoint. These communication and training efforts will help ensure consistency in implementation of this and other Agency performance-based rules by the States, Regions, and regulated community and help limit any associated costs.

IV. Regulatory Revisions Involving Removal of SW-846 Requirements

In section IV of the proposed rule preamble, EPA listed and discussed each of the proposed regulatory revisions which removed the requirement to use SW-846 methods and stated that appropriate methods may be used. We requested public comment on these individual regulatory section revisions (e.g., comments regarding any impacts on implementation of each affected regulation that we may have overlooked) and in general did not receive any significant negative comments regarding the removal of the SW-846 requirements from any of the regulations. We are therefore finalizing the removal of the requirement to use SW-846 in those regulatory sections.

In addition, we are finalizing revisions to three conditional delistings in part 261, appendix IX, which were not included in the proposed rule, but which, like those delistings that were included in the proposal, unnecessarily require the use of SW-846 methods. We announced our intent to revise these delistings in a memorandum to the facilities and to the relevant EPA Regional offices. We gave the entities three weeks to comment on the revisions. One of the affected companies did not respond to the memorandum, while the other two companies responded, but did not have comments regarding the revisions.

Therefore, we decided to proceed with finalizing the revisions to these three delistings. The revisions to the conditional delistings are very similar to the other conditional delistings. We did not receive negative comments regarding the general removal of required uses of SW-846 in any of the conditional delistings listed in the proposed rule. We believe that these revisions are fully consistent with EPA's original intent to make such changes to any conditional delisting, or other regulations, which unnecessarily required the use of SW-846 methods for analyses other than for required MDPs.

The additional conditional delistings revised by this final rule are found in Table 1 of appendix IX of part 261 and address delisted wastes at the following facilities:

- Bekaert Corp., Dyersburg, TN
- OxyVinyls, L.P., Deer Park, TX
- Tokusen USA, Inc., Conway, AR

In addition, since publication of the proposed MIR, the Office of **Federal Register** (OFR) revised its format for incorporation by reference. Specifically,

the OFR requires that the MDP methods incorporated by reference at § 260.11 be specifically mentioned in the relevant sections of the regulations, and not just include referrals to § 260.11. Therefore, in the conditional exclusion listings of part 261, appendix IX, we included a listing of the method-defined parameter methods to replace our proposed language stating that the methods listed in § 260.11 must be used without substitution when required. Those methods must be used as applicable to the particular delisting.

Finally regarding the conditional delistings, we are taking this opportunity to make several editorial corrections to Tables 1, 2 and 3 of appendix IX of part 261, which in no way substantially change or remove any requirements. We are removing repeats of the Bekaert Corp., Dyersburg, TN, conditional delisting from Tables 2 and 3 of appendix IX of part 261 because those entries were added to the tables in error. The Bekaert Corp. conditional delisting is for an F006 waste, which is from a non-specific source, and therefore the delisting only belongs in Table 1, which lists wastes excluded from non-specific sources (i.e., "F" coded listed wastes). Tables 2 and 3 of appendix IX of part 261 are meant to only list the conditional delistings of wastes excluded from specific sources (Table 2, i.e., "K" coded listed wastes) or from commercial chemical products, off-specification species, container residues, and soil residues thereof (Table 3, i.e., "P" and "U" coded listed wastes). Similarly, we are removing the OxyVinyls, Deer Park, TX, delisting from Table 1 and adding it to Table 2 of appendix IX. This is necessary because the OxyVinyls' delisting

addresses K017, K019, and K020 wastes and was incorrectly placed in Table 1. Since these are changes that do not affect the implementation of the regulations, or add new or remove existing regulatory requirements, the Agency is providing notice of the changes without opportunity for comment.

Table 2 lists the regulatory revisions finalized by this rule to remove the requirement to use SW-846 methods and allow the flexibility to use other appropriate methods. As noted in the previous section of this preamble, the proposed references to "using appropriate methods such as those found in * * * SW-846" is not being included in the final regulation because the Agency decided that those references to SW-846 were unnecessary and because the regulated community may continue to believe that SW-846 methods will always be most appropriate. Finally, we corrected our proposed revision to § 261.35(b)(2)(iii)(B) by adding the relevant data from Table 1 of Method 8290 to the regulatory text so that Method 8290 (which contained the table but is not an MDP method) no longer has to be incorporated by reference. In the proposed rule, § 261.35(b)(2)(iii)(B) read as follows: "Not detected means at or below the lower method calibration limit (MCL) in SW-846 Method 8290, Table 1. Other appropriate methods from other reliable sources may be used provided that these criteria are met." In the final rule, we copied the relevant data from Table 1 directly into § 261.35(b)(2)(iii)(B) and so it is no longer necessary to mention Method 8290.

TABLE 2.—REVISIONS TO RCRA REGULATIONS TO REMOVE REQUIRED USES OF SW-846 METHODS

Regulation	Affected topic or program
§ 260.22(d)(1)(i)	Petitions to exclude waste from a particular facility.
Appendix IX to part 261	Wastes excluded under §§ 260.20 and 260.22.
§§ 261.35(b)(2)(iii)(A) and (B)	Deletion of certain waste codes following equipment cleaning.
§ 261.38(c)(7)	Comparable/syngas fuel exclusion.
§§ 264.1034(d)(1)(iii), 264.1063(d)(2), 265.1034(d)(1)(iii), and 265.1063(d)(2).	Air emission standards for process vents and equipment leaks.
§§ 265.1084(a)(3)(iii) and (b)(3)(iii), and 265.1084(a)(3)(ii)(C), (b)(3)(ii)(C), and (c)(3)(i).	Air emission control requirements for tanks, surface impoundments, and containers.
§§ 266.100(d)(1)(ii) and (g)(2), and 266.102(b)(1)	Hazardous wastes burned in boilers and industrial furnaces (BIFs).
§ 266.106(a)	Control of metal emissions at BIFs.
§§ 266.112(b)(1) and (b)(2)(i)	Residues from burning of wastes in BIFs.
Appendix IX, part 266	Methods Manual for BIF regulations.
§§ 270.19(c)(1)(iii) and (iv), 270.22(a)(2)(ii)(B), 270.62(b)(2)(i)(C) and (D), 270.66(c)(2)(i) and (ii).	Part B information and trial burn plan requirements for incinerators and BIFs.

This rule also revises the incorporation by reference of SW-846 in § 260.11 so that the paragraph only

includes SW-846 methods that are required for method-defined parameters. Therefore, for each section where we

removed the requirement to use only SW-846 methods, we also removed the SW-846 incorporation by reference.

Prior to this rule, all methods of SW-846 were incorporated by reference at § 260.11 “when used” within the RCRA regulations. All of SW-846 had to be incorporated by reference because some RCRA regulations required in general the SW-846 methods, *e.g.*, the delisting regulations at § 260.22(d)(1)(i). The required methods had to be incorporated by reference because their full text is too lengthy for publishing directly in the regulations and the methods are readily available to the public in the SW-846 manual. As a result of this rule, we are limiting the requirement to use SW-846 methods to when the methods analyze required method-defined parameters. Therefore, we revised § 260.11 to remove the incorporation by reference of all SW-846 methods, except those SW-846 methods that may be required for the analyses of method-defined parameters. Those methods will remain

incorporated by reference when used for method-defined parameters and required by the RCRA regulations.

It is important to note that, while a method is listed in § 260.11 because it is used for analysis of a method-defined parameter, it also may be used for non-mandatory purposes. In those cases where the method is required by a specific regulation and is listed in 260.11, it is a method-defined parameter. For example, Method 9010C, “Total and Amenable Cyanide: Distillation,” and Method 9012B, “Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation)” are required under § 268.44, the universal treatment standards of the land disposal restrictions regulations, and are listed in § 260.11 as required by § 268.44. In that case, the methods cannot be substituted. However, in other circumstances, these two methods may be used when they are not required by

their regulations (*e.g.*, during delistings) and in those cases they will only be considered appropriate methods and not MDPs. It is the application of a method in a regulation that determines whether a method is being used to analyze a required method-defined parameter—not simply whether the method is listed in § 260.11.

The SW-846 methods that remain as incorporated by reference in § 260.11 are listed in Table 3. The final list is different from that proposed in that Methods 3542 (“Extraction of Semivolatile Analytes Collected Using Method 0010 (Modified Method 5 Sampling Train)”) and 5041A (“Analysis for Desorption of Sorbent Cartridges from Volatile Organic Sampling Train (VOST)”) are no longer included. The methods were removed because they are currently not used as method-defined parameters under the RCRA program.

TABLE 3.—SW-846 METHODS TO REMAIN IN § 260.11

SW-846 method	Chapter location	Method title
0010	Ten	Modified Method 5 Sampling Train.
0011	Ten	Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources.
0020	Ten	Source Assessment Sampling System (SASS).
0023A	Ten	Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources.
0030	Ten	Volatile Organic Sampling Train.
0031	Ten	Sampling Method for Volatile Organic Compounds (SMVOC).
0040	Ten	Sampling of Principal Organic Hazardous Constituents from Combustion Sources Using Tedlar® Bags.
0050	Ten	Isokinetic HCl/Cl ₂ Emission Sampling Train.
0051	Ten	Midget Impinger HCl/Cl ₂ Emission Sampling Train.
0060	Ten	Determination of Metals in Stack Emissions.
0061	Ten	Determination of Hexavalent Chromium Emissions from Stationary Sources.
1010A	Eight	Pensky-Martens Closed-Cup Method for Determining Ignitability.
1020B	Eight	Setaflash Closed-Cup Method for Determining Ignitability.
1110A	Eight	Corrosivity Toward Steel.
1310B	Eight	Extraction Procedure (EP) and Structural Integrity Test.
1311	Eight	Toxicity Characteristic Leaching Procedure.
1312	Six	Synthetic Precipitation Leaching Procedure.
1320	Six	Multiple Extraction Procedure.
1330A	Six	Extraction Procedure for Oily Wastes.
9010C	Five	Total and Amenable Cyanide: Distillation.
9012B	Five	Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation).
9040C	Eight	pH Electrometric Measurement.
9045D	Six	Soil and Waste pH.
9060A	Five	Total Organic Carbon (TOC).
9070A	Five	n-Hexane Extractable Material (HEM) for Aqueous Samples.
9071B	Five	n-Hexane Extractable Material (HEM) for Sludge, Sediment, and Solid Samples.
9095B	Six	Paint Filter Liquids Test.

Please note that we are not adding any new methods to § 260.11—each method listed in Table 3 is already a part of SW-846 and was incorporated by reference during previous rulemakings. For each method retained as incorporated by reference, we are listing in § 260.11 the promulgated version of the method which was last incorporated by reference and thus which must be used during regulatory compliance.

In addition, since proposal of this rule, the Office of Federal Register (OFR) has revised the format of incorporation by reference sections within the Federal regulations, for instance, to include information regarding those regulatory sections or parts that specify use of the methods. We revised § 260.11(a) to reflect this new format.

V. Editorial Corrections to SW-846 References in the RCRA Testing and Monitoring Regulations

In section V of the preamble to the proposed rule, the Agency proposed to correct inaccurate references to SW-846 (some of which are logical outgrowths to the revision to § 260.11), and to clarify method selection flexibility in the RCRA regulations. We did not receive any negative comments regarding that

section of the proposed rule and thus are finalizing the editorial corrections, as proposed.

In addition, we are correcting certain regulations so that they include the

appropriate suffix of the SW-846 MDP method required by them. As a result of these corrections, the method number in the regulation includes the suffix and

matches the respective method number and suffix listed in § 260.11.

Table 4 lists and summarizes the editorial corrections to the RCRA regulations made by this final rule.

TABLE 4.—CORRECTIONS, CLARIFICATIONS OR REMOVALS

Regulation	Text correction, clarification, or removal
§ 258.28(c)(1)—Liquids restrictions	Correction to add “incorporated by reference in § 260.11” after “Paint Filter Liquids Test,” and addition of the suffix “B” to the method number “9095.”
Appendix I to part 258—Constituents for detection monitoring	Removal of footnote 1 to the table, which contains unnecessary references to SW-846.
Appendix II to part 258—List of inorganic and organic hazardous constituents.	Clarification regarding the use of other appropriate methods by removing the “Suggested Methods” and “PQLs (µg/L)” columns, removing footnotes 1, 5 and 6 and revising and renumbering the remaining footnotes, as appropriate.
§ 260.21(d)—Petitions for equivalent methods	Clarification that equivalent methods will be added to § 260.11, instead of just added to SW-846.
§ 260.22(d)(1)(i)—Petitions to amend part 261 to exclude a waste produced at a particular facility.	Removal of unnecessary reference to SW-846.
§§ 261.3(a)(2)(v), 279.10(b)(1)(ii), 279.44(c), 279.53(c), and 279.63(c)—Rebuttable presumption for used oil.	Removal of unnecessary references to SW-846.
§ 261.22(a)(1)—Characteristic of corrosivity	Addition of the suffix “C” to method number “9040.”
Appendix I to part 261—Representative sampling methods ...	Removal of unnecessary references to SW-846.
Appendix II to part 261—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP).	Removal of text in Appendix II to part 261; appendix reserved.
Appendix III to part 261—Chemical analysis test methods	Removal of text in Appendix III to part 261; appendix reserved.
§§ 264.190(a) and 265.190(a)—Applicability	Addition of the suffix “B” to method number “9095.”
§ 264.314(c) and § 265.314(d)—Special requirements for bulk and containerized liquids.	Addition of the suffix “B” to method number “9095.”
§§ 264.1034(f) and 265.1034(f)—Test methods and procedures.	Clarification that direct measurement is allowed to resolve disagreements regarding concentration estimates, and removal of unnecessary references to SW-846.
Appendix IX to part 264—Ground-water monitoring list	Clarification regarding the use of other appropriate methods by removing the “Suggested Methods” and “PQLs (µg/L)” columns and removing footnotes 1, 5 and 6 and revising and renumbering the subsequent footnotes, as appropriate.
§ 265.1081—Definitions	Correction to SW-846 reference in definition of “waste stabilization process.”
Appendix IX to part 266—Methods manual for compliance with BIF regulations.	Corrections to reflect removal of SW-846 methods from the BIF Methods Manual on June 13, 1997 and clarification in existing guidance regarding use of other appropriate methods and SW-846.
§ 268.40(b) and table—Applicability of treatment standards ...	Addition of the suffix “B” to method number “1310,” addition of the suffix “C” to method number “9010,” and addition of the suffix “B” to method number “9012.”
§ 268.44, table—Variance from a treatment standard	Addition of the suffix “C” to method number “9010” and the addition of the suffix “B” to method number “9012.”
§ 268.48, table—Universal treatment standards	Addition of the suffix “C” to method number “9010” and addition of the suffix “B” to method number “9012.”
Appendix IX to part 268—Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (Method 1310).	Addition of the suffix “B” to method number “1310.”

VI. Action To Withdraw the Reactivity Interim Guidance From SW-846 Chapter Seven and Remove Required SW-846 Reactivity Analyses and Threshold Levels From Conditional Delistings

In section VI of the preamble to the proposed rule, the Agency proposed to withdraw the reactivity interim threshold levels and reactive cyanide and sulfide methods from Chapter Seven of SW-846 and from certain conditional delistings found in appendix IX to 40 CFR part 261. EPA proposed these actions based on conclusions it reached and announced in an April 21, 1998 memorandum, a copy of which is available in the docket to this rulemaking, in which EPA addressed concerns about the

effectiveness of the reactivity analysis procedures (see the proposed rule preamble for details regarding the content of this memo and its history). (See the April 21, 1998 memorandum at <http://www.epa.gov/SW-846/> for detailed information regarding NEIC's concerns and EPA's conclusions.) EPA consequently withdrew the July 1985 guidance through the aforementioned April 21, 1998 memorandum. To summarize, EPA concluded that the guidance had the following significant problems:

(1) The test conditions evaluate a single pH condition and not the range of pH conditions (2 to 12.5) specified in the reactivity regulation;

(2) The test conditions do not adequately recover the analyte and thus

the tests predict low percentages of analyte releases in the waste;

(3) The mismanagement scenario and test conditions are not correctly scaled between each other; and

(4) The mismanagement scenario of an open pit is not the only exposure of concern and may not represent a plausible worst case scenario.

EPA received comments from eleven different commenters regarding this topic. You will find a background document containing our complete responses to all relevant public comments in the docket to this rule, docket number RCRA-2002-0025, at the location listed above under **ADDRESSES**. Three commenters supported the removal of the reactivity test procedures, stating that they believed

the test and guidance is flawed and that appropriate waste classifications can be made in the absence of guidance. On the other hand, three other commenters opposed the removal of the reactivity test procedures. One of these commenters stated that there are a number of concerns about the technical reasons for removal of the procedures, and believed that these warrant reconsideration of the proposed deletion of the guidance. In reviewing these concerns, the Agency found that the commenter may be misreading the Agency's basis for deletion of the guidance from SW-846. The commenter was concerned both about the impact of certain pH testing conditions and the use of Henry's Law in the guidance. However, these topics were not the reasons for withdrawing the guidance from SW-846. The Agency will investigate the commenter's concerns regarding pH testing conditions and Henry's Law as it develops revised guidance. Another one of the commenters asserted that the narrative criteria alone can be used for classification of high concentration cyanide wastes, but that additional guidance is needed for classifying lower level cyanide-bearing wastes. The other commenter understood the difficulties associated with the reactivity method guidance, but believed that the regulated community needed something other than the "honor system" to classify these reactive wastes.

The remaining five commenters had general concerns about making the reactivity characteristic determinations, but did not specifically support or oppose deletion of the tests or threshold levels. Four commenters out of the total of eleven commenters requested that EPA replace the deleted tests with other method guidance.

In response to all comments, the Agency is currently reviewing several test methods for possible inclusion in SW-846 as methods for characterizing cyanide-bearing wastes. However, the Agency still believes it inappropriate to retain the reactive cyanide and reactive sulfide methods in SW-846 for the reasons presented in the proposed rule preamble and listed above. Regarding the characteristic of reactivity, regulated parties have always been responsible for complying with the regulation at § 261.23—Characteristic of reactivity, which does not require any particular test methods for the characterization. Therefore, generators and other persons can use other appropriate methods or process knowledge in determining whether a particular waste is hazardous due to its reactivity.

VII. Clarifications to Corrosivity and Ignitability Hazardous Waste Characteristics

In sections VII.A and VII.B of the preamble to the proposed rule, the Agency proposed revisions to the corrosivity characteristic and the ignitability characteristic testing requirements. The proposed revisions included changes to references to ASTM standards and SW-846 methods. We considered these revisions to be non-substantive updates of the methods presently used in the regulations and we believed the revisions would not affect which wastes are determined to be hazardous based on the characteristics. We requested public comment on each of the proposed revisions. Significant comments and our responses are provided below.

A. Revision to § 261.22(a)(2) To Clarify That SW-846 Method 1110A Is the SW-846 Standardized Version of the NACE Standard Specified for Corrosivity Characteristic Testing

In section VII.A of the preamble to the proposed rule, EPA addressed proposed revisions to the corrosivity characteristic testing requirements, which included a clarification to § 261.22(a)(2). Section 261.22(a)(2) defines the hazardous waste characteristic of corrosivity for a liquid which corrodes steel. The required test method is identified as "the test method specified in NACE * * * Standard TM-01-69 as standardized in * * * SW-846 * * *". As explained in the May 19, 1980 regulations (see 45 FR 33084) which added § 261.22 to the RCRA regulations, EPA standardized the NACE Standard TM-01-69 in SW-846. As also explained in the background document to the corrosivity characteristic of the 1980 regulations, NACE Standard TM-01-69 describes a simple immersion test to determine the rate of corrosion. However, the procedure described in the background document, in fact, was not completely standardized because it was designed to test the suitability of metals for a variety of uses. As a result, a comment was submitted at that time which expressed concern with the incomplete standardization of the NACE Standard which allowed variation in test conditions. EPA agreed and, in response to the comment, put a standardized version of the method in SW-846 so that the procedure more clearly defined the appropriate test conditions. At the time, we did not specify which test method of SW-846 included the standardized version of the NACE method. This SW-846 method has

always been Method 1110 (now Method 1110A as of Update IIIB), "Corrosivity Toward Steel." Therefore, in the proposed MIR, we proposed adding the number of this method to § 261.22(a)(2) for clarification of which SW-846 test method is the standardized version of NACE. This revision to § 261.22(a)(2) does not represent a change to the characteristic.

Three commenters addressed this section of the proposed MIR. Two of these commenters explicitly supported the clarification in § 261.22(a)(2) that SW-846 Method 1110A, "Corrosivity Toward Steel," is the standardized version of the NACE Standard TM-01-69. The other commenter did not comment on the proposed revision, but instead requested that EPA address a unrelated concern regarding the content of Method 1110A. None of the commenters disagreed with the Agency statement that the revisions were non-substantive.

Regarding SW-846 Method 1110A, the commenter believed that the method significantly differed from the corresponding Department of Transportation (DOT) corrosivity method. Specifically, Method 1110A suggests that a 24-hour test duration be used, while the DOT method indicates use of a longer test period. The commenter requested that EPA either clarify this difference or amend the regulations to allow the use of DOT's comparable corrosivity characteristic procedure, as set out in 49 CFR 173.137(c)(2), as an alternative test method for corrosivity under the hazardous waste regulations.

First, EPA notes that the test duration time in Method 1110A was not addressed or proposed for revision by the MIR. The MIR only proposed to clarify that Method 1110A is "the test method * * * standardized * * * in SW-846" for the corrosivity characteristic determination. The commenter does not appear to disagree with the proposed clarification. Because the Agency did not take comment, or even raise an issue, with the test duration time, we believe it inappropriate to address this provision in this final rule. Nevertheless, the Agency plans to evaluate the commenter's concerns to determine if future regulatory changes are warranted.

Therefore, in response to the comments submitted, the Agency is finalizing the regulatory revision whereby Method 1110A will be specified in § 261.22(a)(2). It is not necessary to also reference the NACE Standard TM-01-69 in the regulatory text. The NACE method was used to

initially develop Method 1110A and the two methods are not identical.

B. Revisions to § 261.21(a)(1) To Remove an Unnecessary Referral to Method Equivalency Petitions; and an Explanation Regarding the Decision To Not Revise the Regulation To Include the Updated ASTM Standards and References to Methods 1010A and 1020B as Proposed

In section VII.B of the preamble to the proposed rule, the Agency addressed proposed revisions to the ignitability characteristic testing requirements in § 261.21(a)(1). Section 261.21(a)(1) of the RCRA regulations defines the hazardous waste characteristic of ignitability as a liquid which has a flash point less than 60 °C (140 °F) as determined by the use of ASTM Standard D 93–79 or D 93–80 (Pensky-Martens Closed Cup Tester) or ASTM Standard D 3278–78 (Setaflash Closed Cup Tester). Since publication of the regulation, the ASTM Standard has been revised. However, before proposing to replace the ASTM Standard now in the regulation with the newer versions D 93–99c and D 3278–96, EPA compared the newer versions of the test protocol with the older versions of the protocol and found only non-substantive differences. Therefore, EPA proposed and requested comment on replacing the older versions of the ASTM Standard in § 261.21(a)(1) with the more recent versions. In addition, although ASTM Standard D 93–00 is newer than D 93–99c, EPA proposed that D 93–99c replace D 93–80 because EPA found that D 93–00 differed in a possibly substantial manner from D 93–80 and, if it were to be specified instead of D 93–99c, characteristic results may be significantly affected. Specifically, we found that the D 93–00 version specifies different sample container volumes for different sample types. It requires that all matrices, except residual fuel oil, be collected in containers not more than 85% or less than 50% full. This revision may significantly affect the characteristic results, since the potential to lose flammable volatile constituents will be greater from sample containers that may now have as much as 50% headspace. The Agency requested comment on this evaluation.

Finally, the Agency proposed to revise § 261.21(a)(1) to clarify that the ASTM standards for ignitability characteristic determinations are used and referenced by SW–846 Methods 1010A and 1020B. The Agency believed these revisions to § 261.21(a)(1) to be non-substantive and that the changes would not affect which wastes are

determined to be hazardous based on the characteristic.

Five commenters addressed this section of the proposed MIR. Two commenters supported EPA's proposal to update the references to ASTM standards in § 261.21(a)(1). Two other commenters had general concerns about the ignitability characteristic and the ASTM standards, but did not appear to specifically support or oppose the replacements. Only one commenter commented on revising § 261.21(a)(1) to clarify that the ASTM standards for the ignitability characteristic are used and referenced by SW–846 Methods 1010A and 1020B. The commenter supported the regulatory revision.

Regarding ASTM Standards D 93–99c and D 93–00, the two commenters that supported updating the references agreed with EPA that D 93–99c and D 93–00 could yield different results and therefore, different conclusions as to whether or not a waste would be identified as hazardous. The two commenters that disagreed with the Agency's conclusion regarding D 93–00 maintained that the potential to lose volatile compounds also existed in the 1999 version. One of these commenters noted that an even newer version than D 93–00 was now available from ASTM, namely D 93–02. The commenter recommended that the Agency study that standard for any significant differences.

The Agency has considered all of the comments and decided to retain the existing ASTM regulatory standards and not replace them with the newer versions at this time. The Agency agrees with the commenter who suggested that EPA further study and review the new versions of the ASTM standards. Both newer versions of D 93 require that certain ASTM sampling procedures be used, which are unnecessarily prescriptive and often inapplicable to hazardous waste collection. The newer version of D 93 may also promote potential problems with requirements for sampling and automated test equipment. As a result, the Agency believes that a more detailed evaluation is warranted. In addition, the Agency believes that, although the newer versions of D 93 allows for automated test equipment, including the use of an electric igniter which may save time, a rigorous comparison of the electrical igniter versus the flame igniter should be conducted.

In addition, the Agency decided to not finalize the addition of references to Methods 1010A and 1020B in the regulations as proposed, but rather Methods 1010A and 1020B were revised as part of Final Update IIIB (final today

as part of this rule, see section VIII), whereby all method text was replaced with direct references to the ASTM standards listed in § 261.21(a)(1).

Finally, as proposed regarding § 261.21(a)(1), we are removing that portion of the last sentence which refers to the equivalent test method demonstration. This information is adequately addressed in §§ 260.20 and 260.21. It is not necessary to repeat the information regarding method equivalency petitions in each section of a RCRA regulation which requires use of a specific test method(s). Also, this revision is consistent with similar sections on testing in part 261 and other parts of the RCRA regulations.

VIII. Availability of Final Update IIIB and Status of Final Update IV to SW–846

SW–846 is a guidance document that changes over time as new information and data are developed. On October 30, 2002, we proposed to revise several methods and chapters of SW–846 and release these revisions as Update IIIB to the Third Edition of SW–846. To date, EPA has finalized Updates I, II, IIA, IIB, III, and IIIA to the Third Edition of the SW–846 manual. On May 8, 1998 (see 63 FR 25430) and on November 27, 2000 (see 65 FR 70678), we also announced the availability of Draft Update IVA and IVB, respectively, which we published for guidance purposes only.

As part of this rule, we are finalizing Update IIIB. The Methods Team Web site at <http://www.epa.gov/SW-846> has been revised to remove Proposed Update IIIB and include an integrated electronic version of SW–846 which incorporates the final version of that update. In the near future after publication of this rule, Draft Updates IVA and IVB will be replaced by Final Update IV and its availability will be announced by a **Federal Register** notice.

The revised methods of Update IIIB are used for method-defined parameters and thus, any required uses of those methods will remain in the RCRA regulations. Therefore, we revised § 260.11 to include the Update IIIB methods.

In the proposed rule preamble, we also requested comments on certain parts of the Update IIIB methods and chapters. We did not consider comments on the other sections or parts of the methods or chapters because those portions were not proposed for revision. Most of the comments concerned the removal of the reactivity guidance methods from Chapter Seven and updating the ASTM standards. Those comments are addressed in previous sections of this preamble. The

Agency received a few other comments regarding the documents contained in Proposed Update IIIB. The docket to this rule (RCRA–2002–0025) contains a background document with our responses to all the comments submitted. The responses also identify any revisions made to the methods due to the comments.

Table 5 provides a listing of the four chapters and eleven methods in Final

Update IIIB. The method numbers in the table reflect the appropriate method revision letter suffix (*e.g.*, A, B, C, etc.). These suffixes were not always reflected in the RCRA regulations themselves, *e.g.*, the regulations cited the method number without a suffix. The relevant regulations revised by today's rule do reflect the latest suffix. Accordingly, this final rule identifies the latest promulgated version of the methods that

remain as incorporated by reference at § 260.11 in the RCRA regulations. During compliance with those regulations, the regulated community must only use the latest promulgated revision of the methods as indicated in § 260.11, *i.e.*, the regulated community must only use the version of the method cited by § 260.11.

TABLE 5.—FINAL UPDATE IIIB METHODS AND CHAPTERS

Chapters or method number	Method or chapter title
Chapter Five	Miscellaneous Test Methods.
Chapter Six	Properties.
Chapter Seven	Characteristics Introduction and Regulatory Definitions.
Chapter Eight	Methods for Determining Characteristics.
1010A	(Referral to) Pensky-Martens Closed Cup Method for Determining Ignitability.
1020B	(Referral to) Setafash Closed Cup Method for Determining Ignitability.
1110A	Corrosivity Toward Steel.
1310B	Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test.
9010C	Total and Amenable Cyanide: Distillation.
9012B	Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation).
9040C	pH Electrometric Measurement.
9045D	Soil and Waste pH.
9060A	Total Organic Carbon.
9070A	n-Hexane Extractable Material (HEM) for Aqueous Samples.
9095B	Paint Filter Liquids Test.

Note: A suffix of “A” in the method number indicates revision one (the method has been revised once). A suffix of “B” in the method number indicates revision two (the method has been revised twice). A suffix of “C” in the method number indicates revision three (the method has been revised three times).

IX. Addition of Method 25A to §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv)

In section IX of the preamble to the proposed rule, the Agency proposed to revise §§ 264.1034(c)(1)(ii) and (iv) and §§ 265.1034(c)(1)(ii) and (iv) to allow the use of Method 25A, as well as Method 18, during analyses in support of air emission standards for process vents and/or equipment leaks at hazardous waste management facilities. All comments supported these revisions and therefore we finalized these changes, as proposed.

X. Removal of Requirements From §§ 63.1208(b)(8)(i) and (ii) in the NESHAP Standards To Demonstrate Feedstream Analytes Are Not Present at Certain Levels

In section X of the preamble to the proposed rule, the Agency proposed to remove the requirements for analytical DQOs (*e.g.*, 80% upper confidence limit) for feedstream analyses found in §§ 63.1208(b)(8)(i) and (ii) that were previously promulgated in the National Emission Standards for Hazardous Air

Pollutants (NESHAP) for Hazardous Waste Combustors on September 30, 1999. All comments supported these revisions and therefore we are finalizing these changes, as proposed.

XI. Status of the RCRA Waste Sampling Draft Technical Guidance

In section XI of the preamble to the proposed rule, we announced the availability of a stand-alone sampling guidance document entitled, “RCRA Waste Sampling Draft Technical Guidance.” We intended to replace the original sampling guidance version of Chapter Nine found in EPA publication SW–846 with this new document. We requested comment on the guidance. The Agency received a number of comments which are still under review and consideration. This additional review of the document will help us improve the guidance and ensure that it is most useful in its final form. Therefore, we are not at this time issuing a final version of the sampling guidance. Once we complete our review and evaluation of the comments, we will revise the document as appropriate and announce its availability in the **Federal Register**.

XII. State Authorization Procedures

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to

administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law. A state may receive authorization by following the approval process described in 40 CFR part 271. 40 CFR part 271 also describes the overall standards and requirements for authorization.

After a state receives initial authorization, new regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (*i.e.*, 42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. Although authorized states are still required to

update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Finally, authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. See also § 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Authorization of States for Today's Rule

Today's rule affects many aspects of the RCRA Program and is promulgated pursuant to both HSWA and non-HSWA statutory authority. Therefore, the Agency added the rule to Table 1 in § 271.1(j), which identifies Federal regulations that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions, as discussed in the following section of this preamble.

Today's rule language provides standards that are equivalent to or less stringent than the existing provisions in the Federal regulations which they would amend. Therefore, States would not be required to adopt and seek authorization for this rulemaking. EPA would implement this rulemaking only in those states which are not authorized for the RCRA Program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that would be amended. In authorized States, the changes will not be applicable until and unless the State revises its program to adopt the revisions.

(**Note:** Procedures and deadlines for State program revisions are set forth in § 271.21.)

This rule will provide significant benefits to EPA, the states, and the regulated community, without compromising human health or environmental protection. Therefore, EPA strongly encourages authorized states to amend their programs and seek authorization for today's rule.

C. Abbreviated Authorization Procedures

EPA considers today's rule to be a minor rulemaking and is adding it to the list of minor or routine rulemakings in Table 1 to § 271.21. Placement in this table will enable states to use the abbreviated procedures located in § 271.21(h) when they seek authorization for today's changes. These abbreviated procedures were established in the HWIR-media rulemaking (see 63 FR 65927, November 30, 1998).

XIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant," and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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, adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

OMB determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review and the requirements of the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. There are no additional reporting, notification, or recordkeeping provisions associated with today's rule. However, the Office of Management and Budget (OMB) previously approved the information collection requirements contained in some of the existing regulations being revised by this rule, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control numbers for those

information collection requirements, as follows:

- 40 CFR 258.28: OMB control number 2050-0122
- 40 CFR 260.21 and 260.22: OMB control number 2050-0053
- 40 CFR 261.3: OMB control number 2050-0085
- 40 CFR 261.35: OMB control number 2050-0115
- 40 CFR 264.1034, 264.1063, 265.1034, and 265.1063: OMB control number 2050-0050
- 40 CFR 266.100, 266.102, 266.106, 266.112, Appendix IX to part 63, and 270.22: OMB control number 2050-0073
- 40 CFR 270.19: OMB control number 2050-0009
- 40 CFR 270.62: OMB control numbers 2050-0009 and 2050-0149
- 40 CFR 270.66: OMB control numbers 2050-0073 and 2050-0149
- 40 CFR 279.10, 279.44, 279.53 and 279.63: OMB control number 2050-0124

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. Include the ICR and/or OMB number in any correspondence.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is independently owned and operated and not dominant in its field as defined by Small Business Administration (SBA) regulations under Section 3 of the Small Business Act for SIC; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's rule is specifically intended to reduce economic burden for all entities. The action will provide greater flexibility and utility to all affected entities, including small entities, by providing an increase in choices of appropriate analytical methods for RCRA applications. It does not create any new regulatory requirements or require any new reports beyond those now required by the revised regulations. In addition, its revisions need not be adopted by regulated entities. If the methods are appropriate, such entities can continue to use the methods previously specified in the regulations before today instead of choosing the option to use other appropriate methods

from other reliable sources. We have therefore concluded that today's final rule will relieve regulatory burden for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA or the Act), 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 UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed, section 205 of the Act generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator explains in the final rule why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

First, this rule does not contain a Federal mandate. The rule imposes no enforceable duty on any State, local or tribal governments. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. This is due to the fact that this rule does not add any new regulatory requirements and States need not adopt its revisions. This rule only revises certain regulatory sections to remove the requirement to use SW-846 methods and allow the use of other appropriate methods—that is, clarify allowed flexibility in method selection for meeting RCRA-related testing and monitoring requirements. Under RCRA, regardless of the method used—the one previously specified in the regulation

before today or another appropriate method—regulated entities should be demonstrating that the method is appropriate for its intended use. This rule also does not propose new monitoring or information collection requirements. The additional flexibility allowed by this rule should result in improved data quality at reduced cost. Thus, today's rule is not subject to the requirements of sections 202, 203 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained above, today's rule does not impose new requirements on the States and its regulatory changes need not be adopted by the States. Thus, Executive Order 13132 does not apply to this rule. Because these changes are equivalent to or less stringent than the existing Federal program, States would not be required to adopt and seek authorization for them.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination With Indian Tribal Governments" 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" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

Today's rule does not have tribal implications. It 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. For many of the same reasons described above under unfunded mandates, the requirements of the Executive Order do not apply to this rulemaking. As stated above, this rule does not propose any new regulatory requirements and Indian tribal governments need not adopt it. It does not impose any direct compliance costs on tribal governments.

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

Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Also, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action discussed in today's rule is intended to provide increased flexibility in the use of methods for RCRA-related testing and monitoring, and thus is not subject to Executive Order 13045.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May

22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule increases flexibility in the use of methods for RCRA-related testing and monitoring and does not itself identify or require the use of new methods or other technical standards. In fact, this rule, may increase the use of available voluntary consensus standards for some RCRA applications, provided that such methods are appropriate for the regulatory application.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, requires that regulatory actions be accompanied by an environmental justice analysis. This analysis must look at potentially disproportionate impacts the action may have on minority and/or low-income communities.

The Agency has determined that the action does not raise environmental justice concerns. The impact of this rule will be to provide increased flexibility in the choice of appropriate analytical methods for RCRA applications. The Agency is not aware of any disproportionate impacts that such flexibility may have on minority and/or low-income communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 14, 2005.

List of Subjects

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 258

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Comparable fuels, syngas fuels, Excluded hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Incorporation by reference, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Incorporation by reference, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Incorporation by reference, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 279

Environmental protection, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: May 16, 2005.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, EPA amends title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

■ 2. Section 63.1208 is amended by revising paragraph (b)(8) to read as follows:

§ 63.1208 What are the test methods?

* * * * *

(b) * * *

(8) *Feedstream analytical methods.*

You may use any reliable analytical method to determine feedstream concentrations of metals, chlorine, and other constituents. It is your responsibility to ensure that the sampling and analysis procedures are unbiased, precise, and that the results are representative of the feedstream.

* * * * *

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

■ 3. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C 6902(a), 6907, 6912(a), 6944, 6945(c), and 6949a(c).

Subpart C—Operating Criteria

■ 4. Section 258.28 is amended by revising paragraph (c)(1) to read as follows:

§ 258.28 Liquids restrictions.

* * * * *

(c) * * *

(1) Liquid waste means any waste material that is determined to contain “free liquids” as defined by Method 9095B (Paint Filter Liquids Test), included in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (EPA Publication SW-846) which is incorporated by reference. A suffix of “B” in the method number indicates revision two (the method has been revised twice). Method 9095B is dated November 2004. This incorporation by reference was approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register**. A copy may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

* * * * *

■ 5. Appendix I to part 258 is revised to read as follows:

Appendix I to Part 258—Constituents for Detection Monitoring

Common name ¹	CAS RN ²
<i>Inorganic Constituents:</i>	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)
<i>Organic Constituents:</i>	
(16) Acetone	67-64-1
(17) Acrylonitrile 1	107-13-1
(18) Benzene	71-43-2
(19) Bromochloromethane	74-97-5
(20) Bromodichloromethane	75-27-4
(21) Bromoform; Tribromomethane	75-25-2
(22) Carbon disulfide	75-15-0
(23) Carbon tetrachloride	56-23-5

Common name ¹	CAS RN ²
(24) Chlorobenzene	108-90-7
(25) Chloroethane; Ethyl chloride	75-00-3
(26) Chloroform; Trichloromethane	67-66-3
(27) Dibromochloromethane; Chlorodibromomethane	124-48-1
(28) 1,2-Dibromo-3-chloropropane; DBCP	96-12-8
(29) 1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(32) trans-1, 4-Dichloro-2-butene	110-57-6
(33) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(34) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
(37) trans-1, 2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(38) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(39) cis-1,3-Dichloropropene	10061-01-5
(40) trans-1,3-Dichloropropene	10061-02-6
(41) Ethylbenzene	100-41-4
(42) 2-Hexanone; Methyl butyl ketone	591-78-6
(43) Methyl bromide; Bromomethane	74-83-9
(44) Methyl chloride; Chloromethane	74-87-3
(45) Methylene bromide; Dibromomethane	74-95-3
(46) Methylene chloride; Dichloromethane	75-09-2
(47) Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
(48) Methyl iodide; Iodomethane	74-88-4
(49) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
(50) Styrene	100-42-5
(51) 1,1,1,2-Tetrachloroethane	630-20-6
(52) 1,1,2,2-Tetrachloroethane	79-34-5
(53) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(54) Toluene	108-88-3
(55) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(56) 1,1,2-Trichloroethane	79-00-5
(57) Trichloroethylene; Trichloroethene	79-01-6
(58) Trichlorofluoromethane; CFC-11	75-69-4
(59) 1,2,3-Trichloropropane	96-18-4
(60) Vinyl acetate	108-05-4
(61) Vinyl chloride	75-01-4
(62) Xylenes	1330-20-7

¹ Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

² Chemical Abstract Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

■ 6. Appendix II to part 258 is revised to read as follows:

Appendix II to Part 258—List of Hazardous Inorganic and Organic Constituents

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208-96-8	Acenaphthylene
Acetone	67-64-1	2-Propanone
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile
Acetophenone	98-86-2	Ethanone, 1-phenyl-
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-
Acrolein	107-02-8	2-Propenal
Acrylonitrile	107-13-1	2-Propenenitrile
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1,4,4a,5,8,8a)-
Allyl chloride	107-05-1	1-Propene, 3-chloro-
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]- 4-amine
Anthracene	120-12-7	Anthracene
Antimony	(Total)	Antimony
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71-43-2	Benzene
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene
Benzyl alcohol	100-51-6	Benzenemethanol

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
Beryllium	(Total)	Beryllium
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 β ,4 α ,5 β ,6 β)-
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 β ,3 α ,4 β ,5 α ,6 β)-
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 α ,4 β ,5 α ,6 β)-
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6- hexachloro-, (1 α ,2 α , 3 β , 4 α ,5 α ,6 β)-
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1'-[methylenebis (oxy)]bis [2-chloro-
Bis(2-chloroethyl)ether; Dichloroethyl ether	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
Bis(2-chloro-1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether; DCIP, See footnote 4.	108-60-1	Propane, 2,2'-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75-15-0	Carbon disulfide
Carbon tetrachloride	56-23-5	Methane, tetrachloro-
Chlordane	See footnote 5 ..	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-
Chlorobenzene	108-90-7	Benzene, chloro-
Chlorobenzilate	510-15-6	Benzenecetic acid, 4-chloro-(4-chlorophenyl)-hydroxy-, ethyl ester.
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-
2-Chlorophenol	95-57-8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218-01-9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol; 3-Methylphenol	108-39-4	Phenol, 3-methyl-
o-Cresol; 2-Methylphenol	95-48-7	Phenol, 2-methyl-
p-Cresol; 4-Methylphenol	106-44-5	Phenol, 4-methyl-
Cyanide	57-12-5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene) bis[4-chloro-
4,4'-DDE	72-55-9	Benzene, 1,1'-(dichloroethenylidene) bis[4-chloro-
4,4'-DDT	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-chloro-
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3-dichloro-2-propenyl) ester.
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene
Dibenzofuran	132-64-9	Dibenzofuran
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-
3,3'-Dichlorobenzidine	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane; CFC 12	75-71-8	Methane, dichlorodifluoro-
1,1-Dichloroethane; Ethylidene chloride	75-34-3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; 1,1-Dichloroethene;	75-35-4	Ethene, 1,1-dichloro-
Vinylidene chloride cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene.	156-59-2	Ethene, 1,2-dichloro-(Z)-
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78-87-5	Propane, 1,2-dichloro-
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, 2 α ,3 β ,6 β ,6 α ,7 β ,7 α)-

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester.
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
3,3'-Dimethylbenzidine	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
alpha, &alpha-Dimethylphenethylamine	122-09-8	Benzenethanamine, alpha-dimethyl
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
Diphenylamine	122-39-4	Benzenamine, N-phenyl-
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2- (ethylthio)ethyl] ester
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodiox-athiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3alpha,5alpha,6beta,9beta, 9alpha)-
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1alpha, 2beta,2alpha,3alpha,6alpha,6abeta,7beta,7alpha)-
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclo-penta[cd]pentalene-5-carboxaldehyde,2,2a,3,3,4,7-hexachlorodecahydro-(1alpha,2beta,2alpha,4beta,4abeta,5beta,6abeta,6bbeta,7R*)-
Ethylbenzene	100-41-4	Benzene, ethyl-
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester
Famphur	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]-O,O-dimethyl ester
Fluoranthene	206-44-0	Fluoranthene
Fluorene	86-73-7	9H-Fluorene
Heptachlor	76-44-8	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachlor-1a,1b,5,5a,6,6a,-hexahydro-,(1alpha,1bbeta,2alpha,5alpha,5abeta,6beta,6alpha)
Hexachlorobenzene	118-74-1	Benzene, hexachloro-
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane	67-72-1	Ethane, hexachloro-
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene,1,2,3,4,1 0,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1alpha, 4alpha, 4abeta,5beta,8beta,8abeta)-
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta-[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-
Methapyrilene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2,2-trichloroethylidene)bis [4-methoxy-
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-
Naphthalene	91-20-3	Naphthalene
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione
1-Naphthylamine	134-32-7	1-Naphthalenamine
2-Naphthylamine	91-59-8	2-Naphthalenamine
Nickel	(Total)	Nickel
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-
m-Nitroaniline; 3-Nitroaniline	99-09-2	Benzenamine, 3-nitro-
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro-
Nitrobenzene	98-95-3	Benzene, nitro-
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine.	621-64-7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester
Pentachlorobenzene	608-93-5	Benzene, pentachloro-
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-
Pentachlorophenol	87-86-5	Phenol, pentachloro-
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85-01-8	Phenanthrene
Phenol	108-95-2	Phenol
p-Phenylenediamine	106-50-3	1,4-Benzenediamine
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S- [(ethylthio)methyl] ester
Polychlorinated biphenyls; PCBs	See footnote 6 ..	1,1'-Biphenyl, chloro derivatives
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile
Pyrene	129-00-0	Pyrene
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
Styrene	100-42-5	Benzene, ethenyl-
Sulfide	18496-25-8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo- p-dioxin	1746-01-6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108-88-3	Benzene, methyl-
o-Toluidine	95-53-4	Benzenamine, 2-methyl-
Toxaphene	See footnote 7 ..	Toxaphene
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-
Xylene (total)	See footnote 8 ..	Benzene, dimethyl-
Zinc	(Total)	Zinc

¹ Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

²Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

³CAS index names are those used in the 9th Cumulative Index.

⁴This substance is often called bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, propane, 2,2'-oxybis[2-chloro-(CAS RN 39638-32-9)].

⁵Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6).

⁶Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5).

⁷Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

⁸Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 7. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

■ 8. Section 260.11 is revised to read as follows:

§ 260.11 References.

(a) When used in parts 260 through 270 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19380-2959.

(1) ASTM D-93-79 or D-93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester," IBR approved for § 261.21.

(2) ASTM D-1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography," IBR approved for § 264.1033, 265.1033.

(3) ASTM D 2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," IBR approved for § 264.1063.

(4) ASTM D 2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter

(High-Precision Method)," IBR approved for § 264.1033, 265.1033.

(5) ASTM D 2879-92, "Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isotenoscope," IBR approved for § 265.1084.

(6) ASTM D-3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester," IBR approved for § 261.21(a).

(7) ASTM E 168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis," IBR approved for § 264.1063.

(8) ASTM E 169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," IBR approved for § 264.1063.

(9) ASTM E 260-85, "Standard Practice for Packed Column Gas Chromatography," IBR approved for § 264.1063.

(10) ASTM E 926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," Test Method C—Bomb, Acid Digestion Method.

(c) The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

(1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for § 264.1035, 265.1035, 270.24, 270.25.

(2) Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry, PB99-121949, IBR approved for part 261, appendix IX.

(3) The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times).

(i) Method 0010, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.

(ii) Method 0020, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.

(iii) Method 0030, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.

(iv) Method 1320, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.

(v) Method 1311, dated September 1992 and in Update I, IBR approved for part 261, appendix IX, and §§ 261.24, 268.7, 268.40.

(vi) Method 1330A, dated September 1992 and in Update I, IBR approved for part 261, appendix IX.

(vii) Method 1312 dated September 1994 and in Update II, IBR approved for part 261, appendix IX.

(viii) Method 0011, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, and part 266, appendix IX.

(ix) Method 0023A, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.104.

(x) Method 0031, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.

(xi) Method 0040, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.

(xii) Method 0050, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.107.

(xiii) Method 0051, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.107.

(xiv) Method 0060, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, § 266.106, and part 266, appendix IX.

(xv) Method 0061, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, § 266.106, and part 266, appendix IX.

(xvi) Method 9071B, dated April 1998 and in Update IIIA, IBR approved for part 261, appendix IX.

(xvii) Method 1010A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xviii) Method 1020B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xix) Method 1110A, dated November 2004 and in Update IIIB, IBR approved for § 261.22 and part 261, appendix IX.

(xx) Method 1310B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xxi) Method 9010C, dated November 2004 and in Update IIIB, IBR approved for part

261, appendix IX and §§ 268.40, 268.44, 268.48.

(xxii) Method 9012B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§ 268.40, 268.44, 268.48.

(xxiii) Method 9040C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and § 261.22.

(xxiv) Method 9045D, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xxv) Method 9060A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX, and §§ 264.1034, 264.1063, 265.1034, 265.1063.

(xxvi) Method 9070A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, part 261, appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 268.32.

(d) The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

(1) "Flammable and Combustible Liquids Code" (1977 or 1981), IBR approved for §§ 264.198, 265.198.

(2) [Reserved]

(e) The following materials are available for purchase from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.

(1) API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," IBR approved for § 265.1084.

(2) [Reserved]

(f) The following materials are available for purchase from the Environmental Protection Agency, Research Triangle Park, NC.

(1) "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, EPA Publication No. EPA-450/R-92-019, IBR approved for part 266, appendix IX.

(2) [Reserved]

(g) The following materials are available for purchase from the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.

(1) OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations), IBR approved for 262.89 of this chapter.

(2) [Reserved]

Subpart C—Rulemaking Petitions

■ 9. Section 260.21 is amended by revising paragraph (d) to read as follows:

§ 260.21 Petitions for equivalent testing or analytical methods.

* * * * *

(d) If the Administrator amends the regulations to permit use of a new testing method, the method will be incorporated by reference in § 260.11 and added to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, DC 20460.

■ 10. Section 260.22 is amended by revising paragraph (d)(1)(i) to read as follows:

§ 260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility.

* * * * *

(d) * * *

(1) * * *

(i) Does not contain the constituent or constituents (as defined in Appendix VII of part 261 of this chapter) that caused the Administrator to list the waste; or

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 11. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

■ 12. Section 261.3 is amended by revising paragraph (a)(2)(v) introductory text to read as follows:

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(v) *Rebuttable presumption for used oil.* Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

Subpart C—Characteristics of Hazardous Waste

■ 13. Section 261.21 is amended by revising paragraph (a)(1) to read as follows:

§ 261.21 Characteristic of ignitability.

(a) * * *

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60 °C (140 °F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D 93-79 or D 93-80 (incorporated by reference, see § 260.11), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278-78 (incorporated by reference, see § 260.11).

* * * * *

■ 14. Section 261.22 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 261.22 Characteristic of corrosivity.

(a) * * *

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040C in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 °C (130 °F) as determined by Method 1110A in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart D—Lists of Hazardous Wastes

■ 15. Section 261.35 is amended by revising paragraphs (b)(2)(iii)(A) and (B) to read as follows:

§ 261.35 Deletion of certain hazardous waste codes following equipment cleaning and replacement.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) Rinses must be tested by using an appropriate method.

(B) "Not detected" means at or below the following lower method calibration limits (MCLs): The 2,3,7,8-TCDD-based MCL—0.01 parts per trillion (ppt), sample weight of 1000 g, IS spiking

level of 1 ppt, final extraction volume of 10–50 µL. For other congeners—multiply the values by 1 for TCDF/PeCDD/PeCDF, by 2.5 for HxCDD/HxCDF/HpCDD/HpCDF, and by 5 for OCDD/OCDF.

* * * * *

■ 16. Section 261.38 is amended by revising paragraph (c)(7) introductory text to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

* * * * *

(c) * * *

(7) *Waste analysis plans.* The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The plan shall be followed and retained at the facility excluding the waste.

* * * * *

■ 17. Appendix I to part 261 is amended by revising paragraphs four and five to read as follows:

Appendix I to Part 261—Representative Sampling Methods

* * * * *

Containerized liquid waste—“COLIWASA.”

Liquid waste in pits, ponds, lagoons, and similar reservoirs.—“Pond Sampler.”

* * * * *

Appendices II and III to Part 261 [Removed and Reserved]

■ 18. Part 261 is amended by removing and reserving Appendices II and III.

■ 19. Appendix IX to part 261 is amended in Table 1:

■ a. In the entry for “Aptus, Inc., Coffeyville, Kansas,” under the “Waste description” column, by revising paragraphs (2), (3), and (4);

■ b. In the entry for “Arkansas Department of Pollution Control and Ecology, Vertac Superfund site, Jacksonville, Arkansas,” under the “Waste description” column, by revising the introductory text of paragraph (1) and by revising paragraph (3)(C);

■ c. In the entry for “Bekaert Corp., Dyersburg, TN,” under the “Waste description” column, by revising paragraph (4)(B);

■ d. In the entry for “Bethlehem Steel Corporation, Sparrows Point, Maryland,” under the “Waste description” column, by revising the introductory text of paragraph (1);

■ e. In the entry for “BMW Manufacturing Corporation, Greer, South Carolina,” under the “Waste description” column, by revising the introductory text of paragraph (2);

■ f. In the entry for “DuraTherm, Incorporated, San Leon, Texas,” under the “Waste description” column, by revising the introductory text of paragraph (3);

■ g. In the entry for “Eastman Chemical Company, Longview, Texas,” under the “Waste description” column, by revising the introductory text of paragraph (3);

■ h. In the entry for “Envirite of Pennsylvania (formerly Envirite Corporation), York, Pennsylvania,” under the “Waste description” column, by revising paragraph (2);

■ i. In the entry for “Geological Reclamation Operations and Waste

Systems, Inc., Morrisville, PA,” under the “Waste description” column, by revising the introductory text of paragraph (1);

■ j. In the entry for “McDonnell Douglas Corporation, Tulsa, Oklahoma,” under the “Waste description” column, by revising paragraph (3);

■ k. In the entry for “Occidental Chemical, Ingleside, Texas,” under the “Waste description” column, by revising the introductory text of paragraph (3);

■ l. By removing the entry for “OxyVinyls, L.P., Deer Park, TX;”

■ m. In the entry for “Rhodia, Houston, Texas,” under the “Waste description” column, by revising the introductory text of paragraph (3);

■ n. In the entry for “Syntex Agribusiness, Springfield, MO,” under the “Waste description” column, by revising paragraphs (2), (3), (4), (5), and (6);

■ o. In the entry for “Texas Eastman, Longview, Texas,” under the “Waste description” column, by revising paragraph 3;

■ p. In the entry for “Tokusen USA, Inc., Conway, AR,” under the “Waste description” column, by revising paragraph (2)(C), the introductory text of paragraph (3), and paragraphs (3)(A)(ii), (3)(B), and (3)(C)(ii);

■ q. In the entry for “Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida,” under the “Waste description” column, by revising the introductory text of paragraph (1).

The revisions read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * * * *	* * * * *	* * * * *
Aptus, Inc	Coffeyville, Kansas	(1) * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) A minimum of four grab samples must be taken from each hopper (or other container) of kiln residue generated during each 24-hour run; all grabs collected during a given 24-hour run must then be composited to form one composite sample. A minimum of four grab samples must also be taken from each hopper (or other container) of spray dryer/baghouse residue generated during each 24-hour run; all grabs collected during a given 24-hour run must then be composited to form one composite sample. Prior to the disposal of the residues from each 24-hour run, a TCLP leachate test must be performed on these composite samples and the leachate analyzed for the TC toxic metals, nickel, and cyanide. If arsenic, chromium, lead or silver TC leachate test results exceed 1.6 ppm, barium levels exceed 32 ppm, cadmium or selenium levels exceed 0.3 ppm, mercury levels exceed 0.07 ppm, nickel levels exceed 10 ppm, or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with subtitle C of RCRA. Analyses must be performed according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. (3) Aptus must generate, prior to the disposal of the residues, verification data from each 24 hour run for each treatment residue (i.e., kiln residue, spray dryer/baghouse residue) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Condition (2). Analyses must be performed according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Any residues which exceed any of the levels listed below must be retreated or must be disposed of as hazardous. Kiln residue and spray dryer/baghouse residue must not exceed the following levels: Aldrin—0.015 ppm, Benzene—9.7 ppm, Benzo(a)pyrene—0.43 ppm, Benzo(b)fluoranthene—1.8 ppm, Chlordane—0.37 ppm, Chloroform—5.4 ppm, Chrysene—170 ppm, Dibenz(a,h)anthracene—0.083 ppm, 1,2-Dichloroethane—4.1 ppm, Dichloromethane—2.4 ppm, 2,4-Dichlorophenol—480 ppm, Dichlorvos—260 ppm, Disulfaton—23 ppm, Endosulfan I—310 ppm, Fluorene—120 ppm, Indeno(1,2,3,cd)-pyrene—330 ppm, Methyl parathion—210 ppm, Nitrosodiphenylamine—130 ppm, Phenanthrene—150 ppm, Polychlorinated biphenyls—0.31 ppm, Tetrachlorethylene—59 ppm, 2,4,5-TP (silvex)—110 ppm, 2,4,6-Trichlorophenol—3.9 ppm. (4) Aptus must generate, prior to disposal of residues, verification data from each 24-hour run for each treatment residue (i.e., kiln residue, spray dryer/baghouse residue) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Condition (2). The TCDD equivalent levels for the solid residues must be less than 5 ppt. Any residues with detected dioxins or furans in excess of this level must be retreated or must be disposed of as acutely hazardous. For tetra- and penta-chlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for the solid residues. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for the solid residues.
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Arkansas Department of Pollution Control and Ecology.	Vertac Superfund site, Jacksonville, Arkansas.	* * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) <i>Testing</i> : Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. * * * * *
		(3) * * *
		(C) <i>Chlorinated dioxins and furans</i> : 2,3,7,8-Tetrachlorodibenzo-p-dioxin equivalents, 4×10^{-7} ppm. The petitioned by-product must be analyzed for the tetra-, penta-, hexa-, and heptachlorodibenzo-p-dioxins, and the tetra-, penta-, hexa-, and heptachlorodibenzofurans to determine the 2, 3, 7, 8-tetra-chlorodibenzo-p-dioxin equivalent concentration. The analysis must be conducted using a measurement system that achieves practical quantitation limits of 15 parts per trillion (ppt) for the tetra- and penta-homologs, and 37 ppt for the hexa- and hepta-homologs. * * * * *
		* * * * *
Bekaert Corp.	Dyersburg, TN	* * * * *
		(4) * * *
		(A) * * *
		(B) The sample for the annual testing shall be a representative composite sample for all constituents listed in paragraph (1). * * * * *
Bethlehem Steel Corporation	Sparrows Point, Maryland	(1) <i>Testing</i> : Sample collection and analyses (including quality control (QC) procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the stabilization process to be effective under the conditions used during the initial verification testing, BSC may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). BSC must continue to test as specified in Condition (1)(A) until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B) (to the extent directed by EPA). * * * * *
		* * * * *
BMW Manufacturing Corporation	Greer, South Carolina	* * * * *
		(2) <i>Verification Testing Requirements</i> : Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the BMW Sludge meet the delisting levels in Condition (1). * * * * *
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		* * * * *
DuraTherm, Incorporated	San Leon, Texas	* * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) <i>Verification Testing Requirements:</i> DuraTherm must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, DuraTherm may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). DuraTherm must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). * * * * *
Eastman Chemical Company	Longview, Texas	* * * * * (3) <i>Verification Testing Requirements:</i> Eastman must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. After completion of the initial verification period, Eastman may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Eastman must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). * * * * *
* * *	* * *	* * *
Envirite of Pennsylvania (formerly Envirite Corporation).	York, Pennsylvania	* * * * * (2) Each batch of treatment residue must be tested for leachable cyanide. If the leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. * * * * *
* * *	* * *	* * *
Geological Reclamation Oper- ations and Systems, Inc.	Morrisville, Pennsylvania	* * * * * (1) <i>Testing:</i> Sample collection and analyses, including quality control (QC) procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. * * * * *
* * *	* * *	* * *
McDonnell Douglas Corporation	Tulsa, Oklahoma	* * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. McDonnell Douglas must stabilize the previously unstabilized waste from the bottom portion of the northwest lagoon of the surface impoundment (which was closed as a landfill) using fly ash, kiln dust or similar accepted materials in batches of 500 cubic yards or less. McDonnell Douglas must analyze one composite sample from each batch of 500 cubic yards or less. A minimum of four grab samples must be taken from each waste pile (or other designated holding area) of stabilized waste generated from each batch run. Each composited batch sample must be analyzed, prior to disposal of the waste in the batch represented by that sample, for constituents listed in Condition (1). There are no verification testing requirements for the stabilized wastes in the upper portions of the northwest lagoon, the entire northeast lagoon, and the entire south lagoon of the surface impoundments which were closed as a landfill.
		* * * * *
		* * * * *
Occidental Chemical	Ingleside, Texas	(3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, any analyses requiring use of SW-846 methods incorporated by reference in 40 CFR 260.11 must use those methods without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).
		* * * * *
		* * * * *
Rhodia	Houston, Texas	(3) <i>Verification Testing Requirements:</i> Rhodia must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Rhodia may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Rhodia must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).
		* * * * *
		* * * * *
Syntex Agribusiness	Springfield, MO	

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal the composite samples must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.61 ppm; barium levels exceed 12 ppm; cadmium and selenium levels exceed 0.12 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 6.1 ppm; or cyanide levels exceed 2.4 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. (3) One grab sample must be taken from each drum of kiln and cyclone ash generated during each eight-hour run; all grabs collected during a given eight-hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight-hour run. Prior to the disposal of the residues from each eight-hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide extraction) to demonstrate that the following maximum allowable treatment residue concentrations listed below are not exceeded. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Any residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Maximum Allowable Solids Treatment Residue EP Leachate Concentrations (mg/L) Arsenic—1.6, Barium—32, Cadmium—0.32, Chromium—1.6, Lead—1.6, Mercury—0.065, Nickel—16, Selenium—0.32, Silver—1.6, Cyanide—6.5. (4) If Syntex stabilizes any of the kiln and cyclone ash or separator sludge, a Portland cement-type stabilization process must be used and Syntex must collect a composite sample of four grab samples from each batch of stabilized waste. An MEP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide leachate analysis) to demonstrate that the maximum allowable treatment residue concentrations listed in condition (3) are not exceeded during any run of the MEP extraction. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Any residues which exceed any of the levels listed in Condition (3) must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. (If the residues are stabilized, the analyses required in this condition supercede the analyses required in Condition (3).)

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) Syntex must generate, prior to disposal of residues, verification data from each eight hour run from each treatment residue (i.e., kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Conditions (2) and (3). Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Any solid or liquid residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Maximum Allowable Wastewater Concentrations (ppm): Benz(a)anthracene—1×10^{-7}, Benzo(a)pyrene—4×10^{-4}, Chloroform—0.07, Chrysene—0.002, Dibenz(a,h)anthracene—9×10^{-6}, 1,2-Dichloroethane—0.06, Dichloromethane—0.06, Indeno(1,2,3-cd)pyrene—0.002, Polychlorinated biphenyls—1×10^{-4}, 1,2,4,5-Tetrachlorobenzene—0.13, 2,3,4,6-Tetrachlorophenol—12, Toluene—120, Trichloroethylene—0.04, 2,4,5-Trichlorophenol—49, 2,4,6-Trichlorophenol—0.02, Maximum Allowable Solid Treatment Residue Concentrations (ppm); Benz(a)anthracene—1.1, Benzo(a)pyrene—0.43, benzo(b)fluoranthene—1.8, Chloroform—5.4, Chrysene—170, Dibenz(a,h)anthracene—0.083, Dichloromethane—2.4, 1,2-Dichloroethane—4.1, Indeno(1,2,3-cd)pyrene—330, Polychlorinated biphenyls—0.31, 1,2,4,5-Tetrachlorobenzene—720, Trichloroethylene—6.6, 2,4,6-Trichlorophenol—3.9. (6) Syntex must generate, prior to disposal of residues, verification data from each eight-hour run for each treatment residue (i.e., kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Conditions (2) and (3). The TCDD equivalent levels for wastewaters must be less than 2 ppq and less than 5 ppt for the solid treatment residues. Any residues with detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. For this analysis, Syntex must use appropriate methods. For tetra- and pentachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 300 ppq for wastewaters. * * * * *
Texas Eastman	Longview, Texas	(3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing described in Condition Texas Eastman may replace the testing required in Condition (4) with the testing required in Condition (5) below. Texas Eastman must, however, continue to test as specified in Condition (4) until notified by EPA in writing that testing in Condition (4) may be replaced by the testing described in Condition (5). * * * * *
Tokusen USA, Inc.	Conway, AR	(2) * * * (B) * * *

Facility	Address	Waste description
		(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), Tokusen must retreat the batches of waste used to generate the representative sample until it meets the levels. Tokusen must repeat the analyses of the treated waste. (D) * * * (3) <i>Verification Testing Requirements:</i> Tokusen must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). Tokusen must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). (A) * * * (i) * * * * * * * * (ii) Make two composites of representative grab samples collected. * * * * * (B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, Tokusen may substitute the testing conditions in (3)(B) for (3)(A). Tokusen must continue to monitor operating conditions, and analyze representative samples each quarter of operation during the first year of waste generation, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The samples must represent the waste generated during the quarter. (C) * * * (i) * * * (ii) Following cancellation of the quarterly testing, Tokusen must continue to test a representative composite sample for all constituents listed in Paragraph (1) annually (by twelve months after final exclusion), using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. * * * * *
Tyco Printed Circuit Group, Melbourne Division.	Melbourne, Florida	(1) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Tyco Sludge meet the delisting levels in Condition (3). * * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
■ 20. Appendix IX to part 261 is amended in Table 2: ■ a. By removing the entry for “Bekaert Corp., Dyersburg, TN”; ■ b. In the entry for “Bethlehem Steel Corp., Steelton, PA,” under the “Waste description” column, by revising paragraphs (1) and (2); ■ c. In the entry for “Bethlehem Steel Corp., Johnston, PA,” under the “Waste description” column, by revising paragraphs (1) and (2); ■ d. In the entry for “BF Goodrich Intermediates Company, Inc., Calvert City, Kentucky,” under the “Waste description” column, by revising the introductory paragraph and by revising paragraphs (1)(B) and (3); ■ e. In the entry for “CF&I Steel Corporation, Pueblo, Colorado,” under the “Waste description” column, by revising paragraphs (1) and (2); ■ f. In the entry for “Chaparral Steel Midlothian L.P., Midlothian, Texas,” under the “Waste description” column, by revising paragraph (1) and the introductory text of paragraph (3); ■ g. In the entry for “Conversion Systems, Inc., Horsham, Pennsylvania,” under the “Waste description” column,	by revising the introductory text of paragraph (1); ■ h. In the entry for “DOE–RL, Richland, Washington,” under the “Waste description” column, by revising the introductory text of paragraph (1) and by revising paragraph (3); ■ i. In the entry for “Envirite of Pennsylvania (formerly Envirite Corporation), York, Pennsylvania,” under the “Waste description” column, by revising paragraph (2); ■ j. In the entry for “Heritage Environmental Services, LLC, at the Nucor Steel Facility, Crawfordsville, Indiana,” under the “Waste Description” column, by revising paragraph (2); ■ k. In the entry for “Marathon Oil Co., Texas City, TX,” under the “Waste description” column, by revising the introductory text of paragraph (1); ■ l. In the entry for “Occidental Chemical Corp, Muscle Shoals Plant, Sheffield, Alabama,” under the “Waste description” column, by revising the introductory paragraph and by revising paragraphs (1)(A) and (3); ■ m. In the entry for “Occidental Chemical Corporation, Delaware City, Delaware,” under the “Waste	description” column, by revising the introductory paragraph and by revising paragraph (1)(A), the introductory text of paragraph (2) and by revising paragraph (3); ■ n. In the entry for “Oxy Vinyls, Deer Park, Texas,” under the “Waste description” column, by revising the introductory text of paragraph (3); ■ o. By adding the entry for “OxyVinyls, L.P., Deer Park, TX,” after the entry for “Oxy Vinyls, Deer Park, Texas;” ■ p. In the entry for “Roanoke Electric Steel Corp., Roanoke, VA,” under the “Waste description” column, by revising paragraphs (1)(A), (1)(B), and (2); ■ q. In the entry for “USX Steel Corporation, USS Division, Southworks Plant, Gary Works, Chicago, Illinois,” under the “Waste description” column, by revising the introductory text of paragraph (1) and by revising paragraphs (1)(A) and (2). The revisions read as follows: Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22 * * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Bethlehem Steel Corp	Steelton, PA	(1) <i>Testing:</i> (A) <i>Initial Testing:</i> During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions). Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Bethlehem Steel Corp	Johnstown, PA	(B) <i>Subsequent Testing</i>: Bethlehem must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Bethlehem then must analyze each weekly composite sample for the EP leachate concentrations of all the EP toxic metals and nickel. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Pennsylvania. (2) <i>Delisting Levels</i>: If the EP extract concentrations resulting from the testing in condition (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceeds 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be re-treated or managed and disposed in accordance with subtitle C of RCRA. * * * * * (1) <i>Testing</i>: (A) <i>Initial Testing</i>: During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) <i>Subsequent Testing</i>: Bethlehem must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Bethlehem then must analyze each weekly composite sample for the EP leachate concentrations of all the EP toxic metals and nickel. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Pennsylvania. (2) <i>Delisting Levels</i>: If the EP extract concentrations resulting from the testing in condition (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be retreated until it meets these levels or managed and disposed in accordance with subtitle C of RCRA. * * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
BF Goodrich Intermediates Company, Inc.	Calvert City, Kentucky	Brine purification muds and saturator insolubles (EPA Hazardous Waste No. K071) after August 18, 1989. This exclusion is conditional upon the collection and submission of data obtained from BFG's full-scale treatment system because BFG's original data was based on data presented by another petitioner using an identical treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, BFG must implement a testing program. All sampling and analyses (including quality control procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. This testing program must meet the following conditions for the exclusion to be valid: (1) * * * (B) Collect representative grab samples from every batch of treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate weekly composite samples (one of the treated mercury brine muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, two weekly composite samples must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). BFG must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (2) * * * (3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.316 mg/l; for barium exceeds 6.31 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l, for nickel exceeds 3.16 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA. * * * * * * * * * *
CF&I Steel Corporation	Pueblo, Colorado	(1) <i>Testing:</i> (A) <i>Initial Testing:</i> During the first four weeks of operation of the full-scale treatment system, CF&I must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. CF&I must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) <i>Subsequent Testing</i>: CF&I must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. CF&I then must analyze each weekly composite sample for the EP leachate concentrations of all of the EP toxic metals and nickel. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Colorado. (2) <i>Delisting levels</i>: If the EP extract concentrations determined in conditions (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be re-treated or managed and disposed in accordance with Subtitle C of RCRA.
Chaparral Steel Midlothian, L.P.	Midlothian, Texas	* * * * * (1) <i>Delisting Levels</i>: All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calendar year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/l (ppm). Constituents must be measured in the waste by appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. * * * * * (3) <i>Verification Testing Requirements</i>: Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2). If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced by Condition (3)(B). * * * * *
Conversion Systems, Inc.	Horsham, Pennsylvania	* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B.
DOE-RL	Richland, Washington	* * * * * (1) <i>Testing:</i> Sample collection and analyses (including quality control (QC) procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, DOE may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). DOE must continue to test as specified in Condition (1)(A) until notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B). * * * * * (2) * * * (3) <i>Delisting Levels:</i> All total constituent concentrations in the waste samples must be measured using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. All total constituent concentrations must be equal to or less than the following levels (ppm): Inorganic Constituents, Ammonium—10.0, Antimony—0.06, Arsenic—0.5, Barium—20.0, Beryllium—0.04, Cadmium—0.05, Chromium—1.0, Cyanide—2.0, Fluoride—40.0, Lead—0.15, Mercury—0.02, Nickel—1.0, Selenium—0.5, Silver—2.0, Vanadium—2.0, Zinc—100.0, Organic Constituents, Acetone—40.0, Benzene—0.05, Benzyl alcohol—100.0, 1-Butyl alcohol—40.0, Carbon tetrachloride—0.05, Chlorobenzene—1.0, Chloroform—0.1, Cresol—20.0, 1,4-Dichlorobenzene—0.75, 1,2-Dichloroethane—0.05, 1,1-Dichloroethylene—0.07, Di-n-octyl phthalate—7.0, Hexachloroethane—0.06, Methyl ethyl ketone—200.0, Methyl isobutyl ketone—30.0, Naphthalene—10.0, Tetrachloroethylene—0.05, Toluene—10.0, Tributyl phosphate—0.2, 1,1,1-Trichloroethane—2.0, 1,1,2-Trichloroethane—0.05, Trichloroethylene—0.05, Vinyl Chloride—0.02. * * * * * * * * * *
Envirite of Pennsylvania (formerly Envirite Corporation).	York, Pennsylvania	* * * * * (2) Each batch of treatment residue (formerly must be tested for leachable cyanide. If the leachable cyanide levels Corporation) (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. * * * * *
Heritage Environmental Services, LLC, at the Nucor Steel facility.	Crawfordsville, Indiana	* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) <i>Verification Testing</i> : On a monthly basis, Heritage or Nucor must analyze two samples of the waste using the TCLP, SW-846 Method 1311, with an extraction fluid of pH 12 ± 0.05 standard units and for the mercury determinative analysis of the leachate using an appropriate method. The constituent concentrations measured must be less than the delisting levels established in Paragraph (1). * * * * *
		* * * * *
Marathon Oil Co	Texas City, TX	(1) <i>Testing</i> : Sample collection and analyses (including quality control (QC) procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, Marathon may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). Marathon must continue to test as specified in Condition (1)(A), including testing for organics in Conditions (3)(B) and (3)(C), until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B), or that testing for organics may be terminated as described in (1)(C) (to the extent directed by EPA). * * * * *
		* * * * *
Occidental Chemical Corp., Muscle Shoals Plant.	Sheffield, Alabama	Retorted wastewater treatment sludge from the mercury cell process in chlorine production (EPA Hazardous Plant Waste No. K106) after September 19, 1989. This exclusion is conditional upon the submission of data obtained from Occidental's full-scale retort treatment system because Occidental's original data were based on a pilot-scale retort system. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Occidental must implement a testing program. All sampling and analyses (including quality control procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. This testing program must meet the following conditions for the exclusion to be valid: (1) * * * (A) Collect representative grab samples from every batch of retorted material and composite the grab samples to produce a weekly composite sample. The weekly composite samples, prior to disposal or recycling, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). Occidental must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. * * * * * (2) * * * (3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 1.616 mg/l; for barium exceeds 32.3 mg/l; for cadmium or selenium exceed 0.323 mg/l; for mercury exceeds 0.065 mg/l, for nickel exceeds 16.15 mg/l; or for cyanide exceeds 22.61 mg/l, the waste must either be retreated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA. * * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Occidental Chemical Corporation	Delaware City, Delaware	Sodium chloride treatment muds (NaCl-TM), sodium chloride saturator cleanings (NaCl-SC), and potassium chloride treatment muds (KCl-TM) (all classified as EPA Hazardous Waste No. K071) generated at a maximum combined rate (for all three wastes) of 1,018 tons per year. This exclusion was published on April 29, 1991 and is conditioned upon the collection of data from Occidental's full-scale brine treatment system because Occidental's request for exclusion was based on data from a laboratory-scale brine treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment system is in operation, Occidental must implement a testing program for the petitioned waste. All sampling and analyses (including quality control (QC) procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. This testing program must meet the following conditions for the exclusion to be valid: (1) * * * (A) Collect representative grab samples from each batch of the three treated wastestreams (sodium chloride saturator cleanings (NaCl-SC), sodium chloride treatment muds (NaCl-TM) and potassium chloride treatment muds (KCl-TM)) on an as generated basis and composite the samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). Occidental must report the waste volumes produced and the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch. * * * (2) <i>Subsequent Testing:</i> After the first four weeks of full-scale treatment operations, Occidental must do the following; all sampling and analyses (including quality control procedures) must be performed using appropriate methods, and as applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B: * * * (3) If, under conditions (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.77 mg/l; for barium exceeds 15.5 mg/l; for cadmium or selenium exceed 0.16 mg/l; for mercury exceeds 0.031 mg/l, or for nickel or total cyanide exceed 10.9 mg/l, the waste must either be retreated or managed and disposed of in accordance with all applicable hazardous waste regulations. * * * * *
OxyVinyls	Deer Park, Texas	(3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, OxyVinyls may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). OxyVinyls must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
OxyVinyls, L.P.	Deer Park, TX	* * * * * Incinerator Offgas Scrubber Water (EPA Hazardous Waste Nos. K017, K019 and K020) generated at a maximum annual rate of 919,990 cubic yards per calendar year after April 22, 2004, and disposed in accordance with the TPDES permit. For the exclusion to be valid, OxyVinyls must implement a testing program that meets the following Paragraphs: (1) <i>Delisting Levels:</i> All total concentrations for those constituents must not exceed the following levels (mg/kg) in the incinerator offgas scrubber water. Incinerator offgas treatment scrubber water (i) Inorganic Constituents Antimony—0.0204; Arsenic—0.385; Barium—2.92; Beryllium—0.166; Cadmium—0.0225; Chromium—5.0; Cobalt—13.14; Copper—418.00; Lead—5.0; Nickel—1.13; Mercury—0.0111; Vanadium—0.838; Zinc—2.61 (ii) Organic Constituents Acetone—1.46; Bromoform—0.481; Bromomethane—8.2; Bromodichloromethane—0.0719; Chloroform—0.683; Dibromochloromethane—0.057; Iodomethane—0.19; Methylene Chloride—0.029; 2,3,7,8—TCDD equivalents as TEQ—0.0000926 (2) <i>Waste Management:</i> (A) OxyVinyls must manage as hazardous all incinerator offgas treatment scrubber water generated, until it has completed initial verification testing described in Paragraphs (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) are non-hazardous. OxyVinyls can manage and dispose the non-hazardous incinerator offgas treatment scrubber water according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), OxyVinyls must collect one additional sample and perform the expedited analyses to confirm if the constituent exceeds the delisting level. If this sample confirms the exceedance, OxyVinyls must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels set in Paragraph (1). OxyVinyls must notify EPA of the exceedance and resampling analytical results prior to disposing of the waste. (D) If the waste exceeds the levels in paragraph (1) OxyVinyls must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. (E) Upon completion of the Verification Testing described in Paragraphs 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of Paragraph (1), OxyVinyls may proceed to manage its incinerator offgas treatment scrubber water as non-hazardous waste. If subsequent verification testing indicates an exceedance of the Delisting Levels in Paragraph (1), OxyVinyls must manage the incinerator offgas treatment scrubber water as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels. (3) <i>Verification Testing Requirements:</i> OxyVinyls must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, OxyVinyls may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). OxyVinyls must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) <i>Initial Verification Testing:</i> After EPA grants the final exclusion, OxyVinyls must do the following: (i) Within 60 days of this exclusion becoming final, collect four samples, before disposal, of the incinerator offgas treatment scrubber water. (ii) The samples are to be analyzed and compared against the delisting levels in Paragraph (1) (iii). Within sixty (60) days after the exclusion becomes final, OxyVinyls will report initial verification analytical test data, including analytical quality control information for the first sixty (30) days of operation after this exclusion becomes final of the incinerator offgas treatment scrubber water. If levels of constituents measured in the samples of the incinerator offgas treatment scrubber water that do not exceed the levels set forth in Paragraph (1) and are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion, OxyVinyls can manage and dispose of the incinerator offgas treatment scrubber water according to all applicable solid water regulations after reporting the analytical results to EPA. (B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, OxyVinyls may substitute the testing conditions in Paragraph (3)(B) for (3)(A). OxyVinyls must continue to monitor operating conditions, and analyze representative samples of each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual composite sample of the incinerator offgas treatment scrubber water. The results are to be compared to the delisting levels in Condition (1). (C) <i>Termination of Testing:</i> (i) After the first year of quarterly testing, if the Delisting Levels in Paragraph (1) are being met, OxyVinyls may then request that EPA stop requiring quarterly testing. After EPA notifies OxyVinyls in writing, the company may end quarterly testing. (ii) Following cancellation of the quarterly testing, OxyVinyls must continue to test a representative sample for all constituents listed in Paragraph (1) annually. (4) <i>Changes in Operating Conditions:</i> If OxyVinyls significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; OxyVinyls may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Paragraph (1) and it has received written approval to do so from EPA. (5) <i>Data Submittals:</i> OxyVinyls must submit the information described below. If OxyVinyls fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. OxyVinyls must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, EPA Region 6 Corrective Action and Waste Minimization Section, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Finish these records and data when EPA or the State of Texas request them for inspection.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if its never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) <i>Reopener</i>: (A) If, anytime after disposal of the delisted waste OxyVinyls possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, OxyVinyls must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If OxyVinyls fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and environment. (D) If the Regional Administrator or his delegate determines that the reported information does require action by EPA's Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (of no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing EPA actions that are necessary to protect human health or the environment. Any require action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) <i>Notification Requirements</i>: OxyVinyls must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Roanoke Electric Steel Corp	Roanoke, VA	(1) * * * (A) <i>Initial Testing:</i> During the first four weeks of operation of the full-scale treatment system, Roanoke must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions). Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Roanoke must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) <i>Subsequent Testing:</i> Roanoke must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Roanoke then must analyze each weekly composite sample for all of the EP toxic metals and nickel. Analyses must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection for any employee or representative of EPA or the State of Virginia. (2) <i>Delisting levels:</i> If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l, for nickel exceeds 3.15 mg/l, or for cyanide exceeds 1.26 mg/l, the waste must either be re-treated or managed and disposed in accordance with subtitle C of RCRA.
USX Steel Corporation, USS Division, Southworks Plant, Gary Works.	Chicago, Illinois	(1) <i>Testing:</i> Sample collection and analyses (including quality control (QC) procedures) must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. (A) <i>Initial Testing:</i> During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). USX must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) <i>Delisting levels:</i> If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be re-treated until it meets these levels or managed and disposed in accordance with subtitle C of RCRA.
*	*	*

* * * * *

Appendix IX to Part 261 [Amended]

■ 21. Appendix IX to part 261 is amended in Table 3 by removing the entry for “Bekaert Corp., Dyersburg, TN”.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 22. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6927, 6928(h), and 6974.

Subpart J—Tank Systems

■ 23. Section 264.190 is amended by revising paragraph (a) to read as follows:

§ 264.190 Applicability.

* * * * *

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in § 264.193. To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart N—Landfills

■ 24. Section 264.314 is amended by revising paragraph (c) to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

* * * * *

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/

Chemical Methods,” EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart AA—Air Emission Standards for Process Vents

■ 25. Section 264.1034 is amended by revising paragraphs (c)(1)(ii), (c)(1)(iv), (d)(1)(iii) and (f) to read as follows:

§ 264.1034 Test methods and procedures.

* * * * *

(c) * * *

(1) * * *

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

* * * * *

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_h = Q_{2sd} \left\{ \sum_{i=1}^n C_i MW_i \right\} [0.0416] [10^{-6}]$$

Where:

E_h = Total organic mass flow rate, kg/h;
 Q_{2sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$

Where:

E_h = Total organic mass flow rate, kg/h;
 Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;
0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

* * * * *

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A (incorporated by reference under 40 CFR 260.11) of “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, or analyzed for its individual organic constituents.

* * * * *

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved by using direct measurement as specified at paragraph (d)(1) of this section.

Subpart BB—Air Emission Standards for Equipment Leaks

■ 26. Section 264.1063 is amended by revising paragraph (d)(2) to read as follows:

§ 264.1063 Test methods and procedures.

* * * * *

(d) * * *

(2) Method 9060A (incorporated by reference under 40 CFR 260.11) of “Test Methods for Evaluating Solid Waste,”

EPA Publication SW-846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

* * * * *

Subpart EE—Hazardous Waste Munitions and Explosives Storage

■ 27. Appendix IX to part 264 is revised as follows:

Appendix IX to Part 264—Ground-Water Monitoring List

GROUND-WATER MONITORING LIST

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208-96-8	Acenaphthylene
Acetone	67-64-1	2-Propanone
Acetophenone	98-86-2	Ethanone, 1-phenyl-
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-
Acrolein	107-02-8	2-Propenal
Acrylonitrile	107-13-1	2-Propenenitrile
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1 α ,4 α ,4a β ,5 α ,8 α ,8a β)-
Allyl chloride	107-05-1	1-Propene, 3-chloro-
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine
Aniline	62-53-3	Benzenamine
Anthracene	120-12-7	Anthracene
Antimony	(Total)	Antimony
Aramite	140-57-8	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71-43-2	Benzene
Benzo[a]anthracene; Benzanthracene	56-55-3	Benzo[a]anthracene
Benzo[b]fluoranthene	205-99-2	Benzo[b]fluoranthene
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene
Benzy alcohol	100-51-6	Benzenemethanol
Beryllium	(Total)	Beryllium
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 β ,4 β ,5 β ,6 β)-
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 β ,3 α ,4 β ,5 α ,6 β)-
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 α ,4 β ,5 α ,6 β)-
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 β ,4 α ,5 α ,6 β)-
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis [2-chloro-
Bis(2-chloroethyl)ether	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
Bis(2-chloro-1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether	108-60-1	Propane, 2,2'-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromodichloromethane	75-27-4	Methane, bromodichloro-
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75-15-0	Carbon disulfide
Carbon tetrachloride	56-23-5	Methane, tetrachloro-
Chlordane	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a -hexahydro-
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-
Chlorobenzene	108-90-7	Benzene, chloro-
Chlorobenzilate	510-15-6	Benzenecetic acid, 4-chloro- α -(4-chlorophenyl)- α -hydroxy-, ethyl ester
p-Chloro-m-cresol	59-50-7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-
Chloroform	67-66-3	Methane, trichloro-
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-
2-Chlorophenol	95-57-8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126-99-8	1,3-Butadiene,2-chloro-
Chromium	(Total)	Chromium
Chrysene	218-01-9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol	108-39-4	Phenol, 3-methyl-
o-Cresol	95-48-7	Phenol, 2-methyl-
p-Cresol	106-44-5	Phenol, 4-methyl-
Cyanide	57-12-5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acids	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-

GROUND-WATER MONITORING LIST—Continued

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene) bis[4-chloro-
4,4'-DDE	72-55-9	Benzene, 1,1'-(dichloroethenylidene) bis[4-chloro-
4,4'-DDT	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-chloro-
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3-dichloro-2-propenyl) ester
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene
Dibenzofuran	132-64-9	Dibenzofuran
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide	106-93-4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-
m-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-
p-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-
3,3'-Dichlorobenzidine	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane	75-71-8	Methane, dichlorodifluoro-
1,1-Dichloroethane	75-34-3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-
trans-1,2-Dichloroethylene	156-60-5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78-87-5	Propane, 1,2-dichloro-
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1α,2β,2α,3β,6β,6α,7β,7α)-
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
3,3'-Dimethylbenzidine	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
alpha, alpha-Dimethylphenethylamine	122-09-8	Benzenethanamine, α,α-dimethyl-
2,4-Dimethylphenol	105-67-9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol	534-52-1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
1,4-Dioxane	123-91-1	1,4-Dioxane
Diphenylamine	122-39-4	Benzenamine, N-phenyl-
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester
Endosulfan I	959-98-8	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5αβ,6α,9α,9αβ)-
Endosulfan II	33213-65-9	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5αα,6β,9β,9αα)-
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-, 1a,2,2a,3,6,6a,7,7a-octahydro-, (1α,2β,2αβ,3α,6α,6αβ,7β, 7αα)-
Endrin aldehyde	7421-93-4	1,2,4- Methenocyclopenta[cd] pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1α,2β,2αβ,4β,4αβ, 5β,6αβ,6bβ,7R*)-
Ethylbenzene	100-41-4	Benzene, ethyl-
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester
Famphur	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]-O,O-dimethyl ester
Fluoranthene	206-44-0	Fluoranthene
Fluorene	86-73-7	9H-Fluorene
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-

GROUND-WATER MONITORING LIST—Continued

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b] oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a,-hexahydro-, (1α,1β,2α,5α,5aβ,6β,6aα)
Hexachlorobenzene	118-74-1	Benzene, hexachloro-
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane	67-72-1	Ethane, hexachloro-
Hexachlorophene	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone	591-78-6	2-Hexanone
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene,1,2,3,4,1 0,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1α, 4α, 4aβ, 5β, 8β, 8aβ)-
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta-[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-
Methapyrilene	91-80-5	1,2-Ethanediamine,N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2,2-trichloroethylidene)bis [4-methoxy-
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-
Methyl ethyl ketone; MEK;	78-93-3	2-Butanone
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl O=(4-nitrophenyl) ester
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-
Naphthalene	91-20-3	Naphthalene
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione
1-Naphthylamine	134-32-7	1-Naphthalenamine
2-Naphthylamine	91-59-8	2-Naphthalenamine
Nickel	(Total)	Nickel
o-Nitroaniline	88-74-4	Benzenamine, 2-nitro-
m-Nitroaniline	99-09-2	Benzenamine, 3-nitro-
p-Nitroaniline	100-01-6	Benzenamine, 4-nitro-
Nitrobenzene	98-95-3	Benzene, nitro-
o-Nitrophenol	88-75-5	Phenol, 2-nitro-
p-Nitrophenol	100-02-7	Phenol, 4-nitro-
4-Nitroquinoline 1-oxide	56-57-5	Quinoline, 4-nitro, 1-oxide
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosomorpholine	59-89-2	Morpholine, 4-nitroso-
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester
Polychlorinated biphenyls; PCBs	See footnote 4 ..	1,1'-Biphenyl, chloro derivatives
Polychlorinated dibenzo-p-dioxins; PCDDs	See footnote 5 ..	Dibenzo[b,e][1,4]dioxin, chloro derivatives
Polychlorinated dibenzofurans; PCDFs	See footnote 6 ..	Dibenzofuran, chloro derivatives
Pentachlorobenzene	608-93-5	Benzene, pentachloro-
Pentachloroethane	76-01-7	Ethane, pentachloro-
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-
Pentachlorophenol	87-86-5	Phenol, pentachloro-
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85-01-8	Phenanthrene
Phenol	108-95-2	Phenol
p-Phenylenediamine	106-50-3	1,4-Benzenediamine
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S- [(ethylthio)methyl] ester

GROUND-WATER MONITORING LIST—Continued

Common name ¹	CAS RN ²	Chemical abstracts service index name ³
2-Picoline	109-06-8	Pyridine, 2-methyl-
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile
Pyrene	129-00-0	Pyrene
Pyridine	110-86-1	Pyridine
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5- trichlorophenoxy)-
Styrene	100-42-5	Benzene, ethenyl-
Sulfide	18496-25-8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene	127-18-4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-
Tetraethyl dithiopyrophosphate; Sulfotep	3689-24-5	Thiodiphosphoric acid ((HO) ₂ P(S)) ₂ O, tetraethyl ester
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108-88-3	Benzene, methyl-
o-Toluidine	95-53-4	Benzenamine, 2-methyl-
Toxaphene	8001-35-2	Toxaphene
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-
Trichlorofluoromethane	75-69-4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester
Vinyl chloride	75-01-4	Ethene, chloro-
Xylene (total)	1330-20-7	Benzene, dimethyl-
Zinc	(Total)	Zinc

¹ Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

² Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

³ CAS index names are those used in the 9th Cumulative Index.

⁴ Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5).

⁵ This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins.

⁶ This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 28. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937, unless otherwise noted.

Subpart J—Tank Systems

■ 29. Section 265.190 is amended by revising paragraph (a) to read as follows:

§ 265.190 Applicability.

* * * * *

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in § 265.193. To demonstrate the absence or presence of free liquids in the stored/ treated waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart N—Landfills

■ 30. Section 265.314 is amended by revising paragraph (d) to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

* * * * *

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart AA—Air Emission Standards for Process Vents

■ 31. Section 265.1034 is amended by revising paragraphs (c)(1)(ii), (c)(1)(iv), (d)(1)(iii) and (f) to read as follows:

§ 265.1034 Test methods and procedures.

* * * * *

(c) * * *

(1) * * *

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

* * * * *

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_h = Q_{2sd} \left\{ \sum_{i=1}^n C_i MW_i \right\} [0.0416] [10^{-6}]$$

Where:

E_h = Total organic mass flow rate, kg/h;
 Q_{2sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$

Where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

* * * * *

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A (incorporated by reference under § 260.11 of this chapter) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846; or analyzed for its individual organic constituents.

* * * * *

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved using direct measurement as specified at paragraph (d)(1) of this section.

Subpart BB—Air Emission Standards for Equipment Leaks

■ 32. Section 265.1063 is amended by revising paragraph (d)(2) to read as follows:

§ 265.1063 Test methods and procedures.

* * * * *

(d) * * *

(2) Method 9060A (incorporated by reference under § 260.11 of this chapter) of "Test Methods for Evaluating Solid Waste," EPA Publication SW-846 or analyzed for its individual organic constituents; or

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

■ 33. Section 265.1081 is amended by revising the definition "Waste stabilization process" to read as follows:

§ 265.1081 Definitions.

* * * * *

Waste stabilization process means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095B (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste

solidification." This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

■ 34. Section 265.1084 is amended by revising paragraphs (a)(3)(ii)(C), (a)(3)(iii), (b)(3)(ii)(C), (b)(3)(iii), and (c)(3)(i) to read as follows:

§ 265.1084 Waste determination procedures.

(a) * * *

(3) * * *

(ii) * * *

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

* * * * *

(iii) *Analysis.* Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed waste concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m³] at 25 degrees Celsius. At the owner or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than

or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in paragraph (a)(3)(iii)(A) or (B) of this section and provided the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at 25 degrees Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

* * * * *

(iii) *Analysis.* Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified

and summed and the summed waste concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at 25 degrees Celsius. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) of this chapter, or § 265.1083(c)(2)(i) through (c)(2)(vi) of this subpart are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. At the owner or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in paragraph (a)(3)(iii)(A) or (B) of this section and provided the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at 25 degrees Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding

calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

* * * * *

(c) * * *

(3) * * *

(i) *Sampling.* A sufficient number of samples shall be collected to be representative of the waste contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 35. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6922, 6924–6927, 6934 and 6937.

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

■ 36. Section 266.100 is amended by revising paragraphs (d)(1)(ii) and (g)(2) to read as follows:

§ 266.100 Applicability.

* * * * *

(d) * * *

(1) * * *

(ii) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this paragraph by using appropriate methods; and

* * * * *

(g) * * *

(2) Sample and analyze the hazardous waste as necessary to document that the waste contains economically significant

amounts of the metals and that the treatment recovers economically significant amounts of precious metal; and

■ 37. Section 266.102 is amended by revising paragraph (b)(1) to read as follows:

§ 266.102 Permit standards for burners.

(b) * * * (1) The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in appendix VIII of part 261 of this chapter that may reasonably be expected to be in the waste. Such constituents must be identified and quantified if present, at levels detectable by using appropriate analytical procedures. The appendix VIII, part 261 constituents excluded from this analysis must be identified and the basis for their exclusion explained. This analysis will be used to provide all information required by this subpart and §§ 270.22 and 270.66 of this chapter and to enable the permit writer to prescribe such permit conditions as necessary to protect human health and the environment. Such analysis must be included as a portion of the part B permit application, or, for facilities operating under the interim status standards of this subpart, as a portion of the trial burn plan that may be submitted before the part B application under provisions of § 270.66(g) of this chapter as well as any other analysis required by the permit authority in preparing the permit. Owners and operators of boilers and industrial furnaces not operating under the interim status standards must provide the information required by §§ 270.22 or 270.66(c) of this chapter in the part B application to the greatest extent possible.

■ 38. Section 266.106 is amended by revising paragraph (a) to read as follows:

§ 266.106 Standards to control metals emissions.

(a) *General.* The owner or operator must comply with the metals standards provided by paragraphs (b), (c), (d), (e), or (f) of this section for each metal listed in paragraph (b) of this section that is present in the hazardous waste at detectable levels by using appropriate analytical procedures.

■ 39. Section 266.112 is amended by revising paragraph (b)(1) introductory text and paragraph (b)(2)(i) to read as follows:

§ 266.112 Regulation of residues.

(b) * * *
(1) *Comparison of waste-derived residue with normal residue.* The waste-derived residue must not contain appendix VIII, part 261 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing of the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in appendix VIII of this part that may be generated as products of incomplete combustion. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8-TCDD equivalent values using the procedure specified in section 4.0 of appendix IX of this part.

(2) * * * (i) *Nonmetal constituents:* The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in appendix VII of this part, or the level of detection, whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix VII of this part, then a limit of 0.002 micrograms per kilogram or the level of detection (which must be determined by using appropriate analytical procedures), whichever is higher, must be used. The levels specified in appendix VII of this part (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of appendix VII of this chapter) are administratively stayed under the condition, for those constituents specified in paragraph (b)(1) of this section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable Agency guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or

standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by § 268.43 of this chapter for F039 nonwastewaters. In complying with the § 268.43 of this chapter F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans.

Note to this paragraph (b)(2)(i): The administrative stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the **Federal Register** and the Code of Federal Regulations.

■ 40. Appendix IX of part 266 is amended to:

- a. Revise sections 1.0 and 3.0,
- b. Revise the first paragraph of section 4.0,
- c. Revise paragraph (2) of section 10.3,
- d. Revise the introductory text of the fifth bullet of paragraph (1) of section 10.5,
- e. Revise the third dash text under the second bullet of paragraph (2) of section 10.5,
- f. Revise the third and the introductory text of the fifth bullet of paragraph (5) of section 10.5,
- g. Revise the introductory text of the fourth bullet of paragraph (1) of section 10.6,
- h. Revise the third and the introductory text of the fourth bullet of paragraph (5) of section 10.6.

The revisions read as follows:

Appendix IX to Part 266—Methods Manual for Compliance With the BIF Regulations

Section 1.0 Introduction

This document presents required methods for demonstrating compliance with U.S. Environmental Protection Agency regulations for boilers and industrial furnaces (BIFs) burning hazardous waste (see 40 CFR part 266, subpart H). The methods included in this document are:

1. Performance Specifications for Continuous Emission Monitoring (CEM) of Carbon Monoxide, Oxygen, and Hydrocarbons in Stack Gases.
2. Procedures for Estimating the Toxicity Equivalency of Chlorinated Dibenzo-p-dioxin and Dibenzofuran Congeners.

3. Hazardous Waste Combustion Air Quality Screening Procedures (HWCAQSP).

4. Simplified Land Use Classification Procedure for Compliance with Tier I and Tier II Limits.

5. Statistical Methodology for Bevill Residue Determinations.

6. Procedures for Determining Default Values for Air Pollution Control System Removal Efficiencies.

7. Procedures for Determining Default Values for Partitioning of Metals, Ash, and Total Chloride/Chlorine.

8. Alternate Methodology for Implementing Metals Controls.

a. Sampling and analytical methods for multiple metals, hexavalent chromium, HCl and chlorine, polychlorinated dibenzo-p-dioxins and dibenzofurans, and aldehydes and ketones can be found in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication SW-846). Additional methods referenced in subpart H of part 266 but not included in this document can be found in 40 CFR parts 60 and 61, and SW-846.

b. The CEM performance specifications of section 2.0, the relevant sampling Methods 0011, 0023A, 0050, 0051, 0060, and 0061 of SW-846, incorporated by reference in § 260.11, and the toxicity equivalency procedure for dioxins and furans of section 4.0 are required procedures for determining compliance with BIF regulations. For the determination of chloride from HCl/Cl₂ emission sampling train, you must use appropriate methods. For the determination of carbonyl compounds by high-performance liquid chromatography, you must use appropriate methods. The CEM performance specifications are interim. The finalized CEM performance specifications will be published in 40 CFR parts 60 and 61.

* * * * *

Section 3.0 Sampling and Analytical Methods

Note: The sampling and analytical methods to the BIF manual are published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846.

Section 4.0 Procedure for Estimating the Toxicity Equivalency of Chlorinated Dibenzo-p-Dioxin and Dibenzofuran Congeners

PCDDs and PCDFs must be determined using whichever is the most recent version between of SW-846 Method 0023A (incorporated by reference, in § 260.11) as identified, or OAQPS Method 23 of appendix A to part 60. In this method, individual congeners or homologues¹ are measured and then summed to yield a total PCDD/PCDF value. No toxicity factors are specified in the method to compute risks from such emissions.

* * * * *

¹ The term "congener" refers to any one particular member of the same chemical family; e.g., there are 75 congeners of chlorinated dibenzo-p-dioxins. The term "homologue" refers to a group of structurally related chemicals that have the same degree

of chlorination. For example, there are eight homologues of CDs, monochlorinated through octachlorinated. Dibenzo-p-dioxins and dibenzofurans that are chlorinated at the 2,3,7, and 8 positions are denoted as "2378" congeners, except when 2,3,7,8-TCDD is uniquely referred to: e.g., 1,2,3,7,8-PeCDF and 2,3,4,7,8-PeCDF are both referred to as "2378-PeCDFs."

* * * * *

Section 10.0 Alternative Methodology for Implementing Metals Controls

* * * * *

10.3 Basis

* * * * *

(2) The metal concentrations in the collected kiln dust can be accurately and representatively measured.

* * * * *

10.5 Implementation Procedures

* * * * *

(1) * * *

• Follow appropriate guidelines for preparing test plans and waste analysis plans for the following tests:

* * * * *

(2) * * *

—Follow appropriate sampling and analytical procedures such as those described in the waste analysis plan as they pertain to the condition and accessibility of the dust.

* * * * *

(5) * * *

• Follow the sampling, compositing, and analytical procedures described in this method and in other appropriate methods, as they pertain to the condition and accessibility of the kiln dust. * * *

• Samples must be collected at least once every 8 hours, and a daily composite must be prepared according to appropriate procedures.

* * * * *

10.6 Precompliance Procedures

* * * * *

(1) * * *

• Follow appropriate procedures for preparing waste analysis plans for the following tasks:

* * * * *

(5) * * *

• Follow the sampling, compositing, and analytical procedures described in this method and in other appropriate methods as they pertain to the condition and accessibility of the kiln dust.

• Samples must be collected at least once every 8 hours, and a daily composite must be prepared according to appropriate procedures.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

■ 41. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart D—Treatment Standards

■ 42. Section 268.40 is amended by revising paragraph (b) and footnote 7 of the table "Treatment Standards for Hazardous Wastes" to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

(b) For wastewaters, compliance with concentration level standards is based on maximums for any one day, except for D004 through D011 wastes for which the previously promulgated treatment standards based on grab samples remain in effect. For all nonwastewaters, compliance with concentration level standards is based on grab sampling. For wastes covered by the waste extract standards, the test Method 1311, the Toxicity Characteristic Leaching Procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11, must be used to measure compliance. An exception is made for D004 and D008, for which either of two test methods may be used: Method 1311, or Method 1310B, the Extraction Procedure Toxicity Test. For wastes covered by a technology standard, the wastes may be land disposed after being treated using that specified technology or an equivalent treatment technology approved by the Administrator under the procedures set forth in § 268.42(b).

* * * * *

Treatment Standards for Hazardous Wastes

* * * * *

⁷ Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010C or 9012B, found in "Test Methods" for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

* * * * *

■ 43. Section 268.44 is amended by revising footnote 4 of the table "Wastes Excluded From the Treatment Standards Under § 268.40" to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

Table—Wastes Excluded From the Treatment Standards Under § 268.40

* * * * *

(⁴)—Cyanide nonwastewaters are analyzed using SW-846 Method 9010C or 9012B, as incorporated by reference in § 260.11 of this

chapter, sample size 10 grams, distillation time, 1 hour and 15 minutes.

■ 44. Section 268.48 is amended by revising footnote 4 of the table “Universal Treatment Standards” to read as follows:

§ 268.48 Universal treatment standards.

Universal Treatment Standards

4 Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010C or 9012B, found in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

■ 45. Appendix IX to part 268 is revised as follows:

Appendix IX to Part 268—Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (Method 1310B)

Note: The EP (Method 1310B) is published in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT

■ 46. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

■ 47. Section 270.19 is amended by revising paragraphs (c)(1)(iii) and (iv) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

(c) * * *
(1) * * *
(iii) An identification of any hazardous organic constituents listed in part 261, appendix VIII, of this chapter,

which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in part 261, appendix VIII, of this chapter which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

■ 48. Section 270.22 is amended by revising paragraph (a)(2)(ii)(B) to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.

(a) * * *
(2) * * *
(ii) * * *
(B) Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in appendix VIII of part 261 of this chapter, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on appropriate analytical techniques.

Subpart F—Special Forms of Permits

■ 49. Section 270.62 is amended by revising paragraphs (b)(2)(i)(C) and (D) to read as follows:

§ 270.62 Hazardous waste incinerator permits.

(b) * * *
(2) * * *
(i) * * *
(C) An identification of any hazardous organic constituents listed in part 261, appendix VIII of this chapter, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in part 261, appendix VIII, of this chapter

which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for the exclusion stated. The waste analysis must rely on appropriate analytical techniques.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

■ 50. Section 270.66 is amended by revising paragraphs (c)(2)(i) and (ii) to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

(c) * * *
(2) * * *

(i) An identification of any hazardous organic constituents listed in appendix VIII, part 261, of this chapter that are present in the feed stream, except that the applicant need not analyze for constituents listed in appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with appropriate analytical techniques.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 51. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

■ 52. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984—Continued

Promulgation date	Title of regulation	Federal Register reference	Effective date
July 14, 2005	Process Vent and Equipment Leak Organic Air Emission Standards for Owners and of Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	[Insert FR page citation of publication date].	July 14, 2005.
July 14, 2005	Burning of Hazardous Waste in Boilers and Industrial Furnaces.	[Insert FR page citation of publication date].	July 14, 2005.
July 14, 2005	Air Emission Standards Tanks, Surface Impoundments, Containers.	[Insert FR page citation of publication date].	July 14, 2005.

* * * * *

■ 53. Section 271.21 is amended by adding the following entries to Table 1

in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

TABLE 1 TO § 271.21

Title of regulation	Promulgation date	Federal Register reference
Office of Solid Waste Testing and Monitoring Activities, Methods Innovation Rule.	July 14, 2005	[Insert FR page citation of publication date].
Process Vent and Equipment Leak Organic Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	July 14, 2005	[Insert FR page citation of publication date].
Burning of hazardous waste in boilers and industrial furnaces	July 14, 2005	[Insert FR page citation of publication date].
Air Emissions Standards for Tanks, Surface Impoundments, and Containers.	July 14, 2005	[Insert FR page citation of publication date].

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

■ 54. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

Subpart B—Applicability

■ 55. Section 279.10 is amended by revising paragraph (b)(1)(ii) introductory text to read as follows:

§ 279.10 Applicability.

* * * * *

(b) * * *

(1) * * *

(ii) *Rebuttable presumption for used oil.* Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in

appendix VIII of part 261 of this chapter).

* * * * *

Subpart E—Standards for Used Oil Transporter and Transfer Facilities

■ 56. Section 279.44 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 279.44 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

Subpart F—Standards for Used Oil Processors and Re-Refiners

■ 57. Section 279.53 is amended by revising paragraph (c) introductory text to read as follows:

§ 279.53 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

Subpart G—Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

■ 58. Section 279.63 is amended by revising paragraph (c) introductory text to read as follows:

§ 279.63 Rebuttable presumption for used oil.
* * * * *
(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with

halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant

concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).
* * * * *
[FR Doc. 05–10197 Filed 6–13–05; 8:45 am]
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Federal Register

**Tuesday,
June 14, 2005**

Part III

Environmental Protection Agency

40 CFR Parts 9 and 86

**Control of Emissions of Air Pollution
From New Motor Vehicles: In-Use Testing
for Heavy-Duty Diesel Engines and
Vehicles; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 9 and 86**

[OAR–2004–0072; AMS–FRL–7922–4]

RIN 2060–AM17

Control of Emissions of Air Pollution From New Motor Vehicles: In-Use Testing for Heavy-Duty Diesel Engines and Vehicles**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: We are establishing a manufacturer-run, in-use emissions testing program for 2007 and later model year heavy-duty diesel vehicles. The ground-breaking in-use test program will require engine manufacturers to measure exhaust emissions from their diesel engines using portable emissions measurement systems. Also for the first time, all manufacturers will be regularly providing EPA with a significant quantity of emissions data generated from engines used in regular service, which EPA will evaluate to ensure the engines comply with specified emissions requirements. The rule is a result of an agreement between EPA and

the Engine Manufacturers Association. This rule advances EPA's clean diesel activities by helping to ensure that the benefits of more stringent emission standards are realized under real-world driving conditions.

DATES: This final rule is effective August 15, 2005.

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2004–0074. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. This rule relies in part on information related to our November 2002 final rule, which can be found in Public Docket A–2000–01. This docket is incorporated by reference into the docket for this action. 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 Docket in the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division hotline at (734) 214–4636 or asinfo@epa.gov, or alternatively Carol Connell (734) 214–4349 or connell.carol@epa.gov

SUPPLEMENTARY INFORMATION:**Regulated Entities**

This action will affect you if you produce or import new heavy-duty diesel engines which are intended for use in highway vehicles such as trucks and buses, or produce or import such highway vehicles, or convert heavy-duty vehicles or heavy-duty engines used in highway vehicles to use alternative fuels.

The following table gives some examples of entities that are likely to be affected by these regulations:

Category	NAICS codes ^a	SIC codes ^b	Examples of potentially regulated entities
Industry	336112 336120	3711	Engine and Truck Manufacturers.
Industry	811112 811198	7533 7549	Commercial Importers of Vehicles and Vehicle Components.

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) system code.

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action to the person listed in “**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 No. OAR–2004–0074. 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. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Docket in 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.

This rule relies in part on information related to our November 2002 final rule, which can be found in Public Docket A–2000–01. This docket is incorporated by

reference into the docket for this action, OAR–2004–0074.

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/> Or you can go to the federal-wide eRulemaking site at www.regulations.gov.

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET 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. Once in the system, select “search,” then key in the appropriate docket identification number.

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I. Overview

This section summarizes the manufacturer-run, in-use Not-to-Exceed (NTE) testing program for on-highway, heavy-duty diesel vehicles and engines.

It also contains background on the genesis of the rule, an overview of the origin and application of EPA's NTE emission standards, and a brief description of our ongoing in-use NTE. More detailed information on the NTE standards for heavy-duty diesel engines is contained in section II. F. 1. of this preamble.

A. Summary of the Rule

We are establishing a manufacturer-run, in-use NTE testing program for vehicles with heavy-duty diesel engines, beginning in calendar year 2005. The entire program is being adopted largely as we proposed in the **Federal Register** on June 10, 2004 (69 FR 32804) and June 21, 2004 (69 FR 34326). There will be a pilot program in calendar years 2005 and 2006 for gaseous pollutants (*i.e.*, nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NO_x)). In calendar years 2006 and 2007, there will be a pilot program for particulate matter (PM). Subsequent to these programs, the fully enforceable in-use test program begins. Therefore, the enforceable program starts in 2007 for gaseous pollutants and 2008 for PM. In those years, the test program will apply to 2007 and later model year engines.

This testing program addresses a long standing need to monitor the emissions performance of the engines installed in these on-highway vehicles when they are operated under a wide range of real world conditions. It is specifically intended to monitor compliance with the NTE exhaust emission standards and to help ensure that heavy-duty diesel engines will comply with all applicable emission standards (*e.g.*, including those based on the Federal Test Procedure (FTP)) throughout their useful lives. Background on our NTE standards is presented in sections I. B. and C. of this Preamble.

The new testing program will, for the first time, require engine manufacturers to assess in-use exhaust emissions from heavy-duty diesel vehicles using onboard, portable emission measurement systems during typical operation on the road. Previously, engine emissions testing involved removing the engine from the vehicle and testing the engine in a laboratory on an engine dynamometer. Starting in the mid-1990s, EPA facilitated research into portable systems by developing and using prototype systems on a more limited basis in its compliance programs. Vehicles were instrumented with portable systems to measure their emissions performance during real-world operating conditions. It became clear that these systems offered

advantages over conventional approaches to assess in-use exhaust emissions from engines for design improvement, research, modeling, and compliance purposes.

Under the program, we will designate a certain number of heavy-duty diesel engine families for testing. Generally, no more than 25 percent of a manufacturer's engine families would be designated in any single year. We expect manufacturers will use their existing customer relationships and create new lines of communication with customers to recruit appropriate test vehicles from fleets or individual owners. Each selected vehicle will be equipped with a portable emission measurement system and driven by its normal operator, with a normal payload, over its regular driving route. All data and test results will be reported to EPA on a regular basis. The manufacturer of a designated heavy-duty engine family will pay for all of the expenses associated with the planning, vehicle procurement, testing, and data reporting.

The test program is composed of two phases. In the first phase of testing (Phase 1) the manufacturer will test a minimum of five and a maximum of 10 vehicles per engine family selected for testing. If five out of the first five vehicles, or five out of the first six vehicles pass a specified vehicle pass criteria, or vehicle testing criteria, no further testing or other data relating to that diesel engine family will be required from the manufacturer that year. However, we may choose that engine family for testing again in a later year. If the above conditions are not met, then a total of 10 vehicles will be tested in Phase 1. If eight out of the 10 vehicles pass the vehicle testing criteria, no further testing or other data relating to that diesel engine family will be required from the manufacturer for that year.

In all other cases, we will decide on a course of action depending on the number of vehicles from the designated engine family that fail to pass the vehicle testing criteria and other factors. In making our decision, we will thoroughly review the test results, consult with the engine manufacturer, allow the manufacturer to provide additional data, and consider other pertinent information. The action may include, but is not limited to, one of the following:

- 1. No further action because no significant nonconformance issues are indicated;
- 2. Initiate the second phase of testing (Phase 2); or
- 3. Seek some form of remedial action.

If five or fewer of the Phase 1 test vehicles satisfy the vehicle pass criteria, EPA may require the manufacturer to conduct Phase 2 testing. If only six or seven of the Phase 1 test vehicles pass the vehicle pass criteria, EPA may require the manufacturer to conduct Phase 2 testing under these regulations if the manufacturer agrees to perform such testing. However, if Phase 2 testing is conducted for any reason, even if the manufacturer elects to pursue the next phase of testing voluntarily, we may direct that up to 10 additional vehicles be tested. In this phase, we may also focus testing on one or more engine configurations within the engine family. Additionally, we may specify certain driving routes or other driving conditions (e.g., geographic conditions or time of year). The purpose of these additional specifications is to better understand how widespread or under what conditions the Phase 1 test vehicles are failing to pass the vehicle pass criteria. In those instances, the specifications would be based on the Phase 1 test conditions that indicated a potential nonconformity.

As with Phase 1 testing, any remedial action we may choose to pursue based on Phase 2 testing will be made only after a thorough review of the test results, consultation with the engine manufacturer, and consideration of other pertinent information.

The in-use testing program is primarily designed as an information-gathering process that will inform EPA's decision-making. The results of in-use testing for any particular engine family will not necessarily lead to, or necessarily insulate an engine family from, appropriate remedial actions, depending on the particular results of the testing and other information in EPA's possession. However, EPA believes that the results of the in-use testing and information gathered by the program will be a critical resource for EPA in determining how to direct our limited resources.

We expect that the wealth of in-use test data generated by the program will have a number of valuable uses in addition to monitoring heavy-duty diesel engines for NTE compliance purposes under the program. For example, though EPA would not engage in routine NTE testing of engines or engine families that satisfy the Phase 1 test criteria unless new information indicates that a nonconformity exists, we may use the in-use data along with other information to make independent evaluations about the possible need to pursue further testing or actions. We may also use the information in the development of in-use emission factors

for emissions and air quality modeling. Further, manufacturers have told us that they expect the proposed program will fortify the traditional laboratory-based engine development process. This will be done by enhancing a manufacturer's ability to evaluate the performance of the engine and emissions control system under real world operating conditions and use, the results of which may be used to create cleaner and more durable future engine designs. Finally, the in-use test data will also be available to the public for review and analysis.

As previously described, the in-use NTE testing program will be fully enforceable beginning in 2007 for gaseous pollutants and 2008 for PM. To ensure a successful launch of this new program, there is a mandatory pilot program for gaseous emissions in calendar years 2005 and 2006, and 2006 and 2007 for PM using only the first phase (Phase 1) of testing. During these years both EPA and the heavy-duty diesel engine manufacturers will gain valuable experience with the in-use testing protocols, and the generation, interpretation, and reporting of in-use emissions data. If an engine family fails to meet the vehicle pass requirements of Phase 1 testing under the pilot program, we will not pursue any form of remedial action based solely on that data. However, we may utilize such information in conjunction with our own test data and other information to assess or pursue any enforcement or remedial action that otherwise may be authorized during that time.

The success of this testing program depends on ensuring that the new onboard, portable measurement systems are correctly measuring exhaust emissions in the field. To this end, we are establishing measurement "accuracy" margins for these new systems. The purpose of the margins is to account for the emissions measurement variability associated with these units in the field. During the pilot program years, manufacturers will use interim margins that we believe represent an upper bound of the possible instrumentation variability based on our experience with portable and laboratory measurement systems. Accuracy margins for the fully enforceable program are being developed through a comprehensive research, development, and demonstration program. The program is described in a Memorandum of Agreement and summarized in section II. L. 3. of this preamble.

B. Background on the Origins of This Rule

On October 6, 2000, we published a final rule that promulgated new emission standards for on-highway heavy-duty engines. See 65 FR 59896. The final rule included new standards, applicable to 2007 and later model year heavy-duty diesel engines, called NTE standards. These standards are designed to apply under any conditions reasonably expected to occur during normal vehicle use. The test procedure for the NTE standards is different from most previous test procedures in that it is not based on a rigidly timed test cycle, but instead allows testing at a wide, though bounded, range of engine and ambient conditions that can occur in normal vehicle operations.

These NTE standards, as well as other provisions of the final rule, were particularly designed to ensure that engines and vehicles manufactured to meet the FTP standards over the engine certification test cycle in the laboratory continued to effectively control emissions under any conditions reasonably expected to occur during normal vehicle use. The final rule described our concerns regarding additional factors that may jeopardize the emission reductions expected in-use from the standards promulgated in that rule. See 65 FR at 59910 (October 6, 2000). Among these factors was the absence of an effective in-use compliance program for heavy duty engines and vehicles. We noted that we had received broad support from states, environmental organizations, and industry to move forward with developing a proposal to address this issue. The Engine Manufacturers Association (EMA) committed to work diligently and cooperatively with EPA and the California Air Resources Board (CARB) to resolve the open questions in a timely fashion. See 64 FR 58472, 58514 (October 29, 1999).

EMA and certain individual engine manufacturers challenged EPA's adoption of NTE standards in several rules.¹ EPA, CARB and the engine manufacturers, as well as state and environmental organizations, engaged in lengthy and ultimately productive discussions to settle these challenges and to go forward with a regulatory program that included robust measures to ensure that emission controls implemented to meet EPA and CARB

¹ See *International Truck et al. v. EPA*, (DC Cir. Nos. 00–1510 and 00–1512); *EMA et al. v. EPA* (DC Cir. Nos. 01–1129 and 02–1080); *International Truck v. EPA*, No. 01–1137; *EMA v. EPA*, (DC Cir. No. 00–1066); and *EMA v. EPA*, (DC Cir. No. 03–1007)

standards remain effective under all normal vehicle operation. One result of these discussions was the identification of the basic program elements for a manufacturer run, in-use NTE testing program, and an agreement to go forward with a rulemaking to implement such a program for on-highway heavy-duty diesel engines.² Today's action essentially completes that rulemaking process.

C. Historical Context

1. Genesis and Description of NTE Standards

Traditionally, heavy-duty diesel vehicles and engines have been certified to exhaust emission standards in the laboratory. More specifically, the engine is tested separately from the vehicle using an engine dynamometer and a prescribed "driving cycle." Monitoring for compliance with the applicable emission standards during the life of these vehicles (*i.e.*, in-use) was also determined by removing the engine from the vehicle and then testing it using the same laboratory measurement procedures. Several years ago we became concerned that in-use emissions might inappropriately exceed the applicable standards when engines were operated under conditions not found during traditional laboratory testing (*i.e.*, off-cycle emissions). An investigation into off-cycle emissions performance confirmed that advances in engine technology had allowed some manufacturers to design engines with control strategies which resulted in substantially greater levels of emissions during typical real-world operating conditions than were emitted during the laboratory testing cycle required for certification.

To close the gap between laboratory and real world emissions performance, and to deter manufacturers from using such strategies in the future, we developed NTE emission standards for heavy-duty diesel engines. The NTE requirements establish an area or zone under the torque curve of an engine where emissions must not exceed a specified value for any of the regulated pollutants.³ The provisions also define a specific range of operating conditions, *i.e.*, temperature, altitude, and humidity. The test itself does not involve a specific driving cycle of any

specific length, *i.e.*, mileage or time, rather it involves all driving that could occur within the bounds of the NTE control area. The vehicle (or engine) is operated under conditions that may reasonably be expected to be encountered in normal vehicle operation and use, including operation under steady-state or transient conditions and under varying ambient conditions. Within the NTE control area, emissions must not exceed a specified multiple of the underlying FTP standards. For heavy-duty diesel engines, this multiple is generally 1.25 or 1.50 times the applicable FTP standards.

Initially, the NTE requirements were a key provision in consent decrees with several manufacturers of heavy-duty diesel engines that resulted from the investigation described above. This new requirement became effective in 1998 for most manufacturers involved in those consent decrees, and by November 2002 had been applied for such manufacturers to the NO_x standards set to go into effect in model year 2004. NTE requirements are currently being used as a screening tool for 2004 through 2006 model year engines not covered by the consent decrees. The NTE requirements will be mandatory for all 2007 and later heavy-duty diesel engines. We also promulgated NTE standards for certain other mobile sources.⁴

The NTE test can be conducted in an emissions testing laboratory using an appropriate dynamometer or while the vehicle is being used on the road. It is this last feature that makes NTE testing a very powerful in-use compliance monitoring tool. In-use testing and compliance become much easier with the NTE standards since emissions may be sampled during normal vehicle use on the road using portable emission measurement systems. As already mentioned, traditional laboratory engine testing over a very specific driving schedule requires the engine be removed from the vehicle rendering in-use testing prohibitively cumbersome and expensive. Further, engine-based testing cannot account for the drive train and sensor interactions which occur during normal vehicle operation.

As such, testing during normal vehicle use, using an objective numerical standard, makes enforcement easier and provides more certainty of what is occurring in-use versus a fixed laboratory procedure.

2. Current EPA In-Use NTE Testing

We have been conducting our own in-use NTE testing of heavy-duty diesel engines for the past four years. Over that period, an average of 40 on-highway vehicles were tested annually. Vehicles are procured through the voluntary participation of commercial and municipal fleets and emissions are tested during normal service operation. Portable emission measurement systems are installed on-site at the fleet's facility before the vehicle begins its service day. EPA uses a prototype portable sampling system which measures hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NO_x). Our experience with this program has aided us in developing today's final rule for a manufacturer-run, in-use NTE test program.

3. Plans for Nonroad Diesel Engine In-Use NTE Testing

On June 29, 2004, we published NTE requirements that accompany our new transient-cycle emission standards for nonroad diesel engines (69 FR 38957). This new test cycle will be phased into the certification requirements between 2011 and 2013, depending on an engine's horsepower rating. The NTE provisions are similar to those described in this notice for on-highway heavy-duty diesel engines. Presently, we are developing an outline for a proposed manufacturer-run, in-use NTE test program for nonroad diesel engines covered by the new requirements. We expect this program will have similar characteristics to today's rule, but will address some unique issues pertaining to the nonroad market. Among these are such things as the widely varying power ranges of nonroad engines (including those much smaller and much bigger than highway engines), and broad array of equipment applications that may use the same engine type or model. We expect the program to have a pilot program similar to the pilot program in today's rule and to be initiated consistent with the introduction of emission control requirements for nonroad engines built in conformance with the new standards, which are based on aftertreatment. The resulting implementation date may be as early as 2011.

² See Final Settlement Agreement, dated June 2, 2003, in the cases cited above.

³ Torque is a measure of rotational force. The torque curve for an engine is determined by an engine "mapping" procedure specified in the Code of Federal Regulations. A graphical representation of the NTE control area is contained in the Technical Support Document accompanying this proposed rule.

⁴ The use of NTE testing as a screening tool for 2004–2006 on-highway heavy-duty diesel engines is discussed in Advisory Circular 24–3. The final rule applying the NTE to 2007 and model year engines is published at 65 FR 59896 (October 6, 2000). Other final rules promulgated by EPA extended the NTE approach to new marine compression-ignition engines at or above 37 horsepower, 64 FR 73300 (December 29, 1999) and 67 FR 68242 (November 8, 2002); and to a new and more stringent phase of on-highway heavy duty engine standards 66 FR 5002 (January 18, 2001).

D. California's Intent To Adopt an In-Use NTE Test Program

California's involvement in the development of this program was critical in assuring that engine manufacturers are subject to a consistent national in-use NTE test program. CARB intends to adopt an identical program soon. EPA and CARB expect to coordinate in the annual selection of engine families to be in-use tested and to work together in determining whether Phase 2 testing is warranted for families where the number of passing engines in Phase 1 does not automatically lead to no further testing. CARB has its own authority and decision process in determining remedial action for failing families, but CARB expects to work with EPA and the manufacturers in this process.

II. Details of the Rule

This section presents the details of the two-phase in-use NTE testing program for heavy-duty diesel vehicles. It focuses primarily on the fully enforceable program that will begin with the 2007 model year for gaseous pollutants and 2008 for PM. A number of the special features for a pilot program during the two years preceding each of the fully enforceable dates described above are also described. Key aspects of the pilot program are further summarized in section II. M. of this preamble.

We have initiated a comprehensive research, development, and demonstration program that is designed to identify new accuracy measurement margins for portable measurement devices. When completed, the accuracy margins are expected to be adopted for use in the fully enforceable program. EPA has modified the testing requirements during the pilot program for manufacturers that participate in the accuracy margin development effort. In addition, the fully enforceable program for either gaseous emissions or PM may be postponed if the process of identifying the final accuracy margins is significantly delayed beyond the originally scheduled completion dates. The program for developing the measurement accuracy margin is described in section II. L. and the implications of this program are described throughout this preamble as appropriate.

The in-use NTE testing program we are promulgating today is nearly identical to the program we proposed in the **Federal Register** on June 10, 2004 (69 FR 32804) and June 21, 2004 (69 FR 34326). The features of the program that were revised based on public comments received on the proposed rule are

described in this section. Our response to the significant public comments is contained in the Summary and Response to Comments document that accompanies this final rule.

A. Applicability

The requirements apply to diesel engines certified for use in heavy-duty vehicles (including buses) with gross vehicle weight ratings (GVWR) greater than 8,500 pounds. However, the requirements do not apply to any heavy-duty diesel vehicle that was certified using a chassis dynamometer under our CAP 2000 certification program, including medium-duty passenger vehicles with GVWRs of between 8,500 and 10,000 pounds. The manufacturer of heavy-duty diesel engines subject to the program is responsible for all of the costs associated with project planning, vehicle procurement, testing, and reporting.

We are establishing a fully enforceable, two-phase test program for heavy-duty diesel engines beginning in 2007 for gaseous pollutants and 2008 for PM. In those years, the fully enforceable test program will apply to 2007 and later model year engines. We are also establishing a mandatory pilot program for gaseous pollutants in calendar years 2005 and 2006, and for PM in calendar years 2006 and 2007. Under the gaseous emission pilot program, 2002 through 2006 model year vehicles may be tested. Under the PM pilot program, 2002 through 2007 model year vehicles may be tested. The pilot program will utilize only the first phase of the two-phase program developed subsequent fully enforceable program.

We had originally proposed to require emissions testing for PM concurrently with gaseous emissions. In doing so, we acknowledged that more development work was needed before portable PM-measurement systems were available. However, it appeared possible to complete this work prior to the start of the pilot program in 2005. The engine manufacturers commented that the instrumentation to measure PM emissions onboard a vehicle was not available. Further, they stated that a PM requirement should not be included in the program until such time as validated, properly field-tested onboard devices become commercially available. Our evaluation of the status of portable PM measurement technology shows that the development of portable devices has progressed, but not as quickly as anticipated. We currently expect portable PM measurement systems will be available for 2006. Therefore, we have delayed the start of the PM pilot program one year until that date, *i.e.*,

2006. Similarly, the enforceable program for PM will now start in 2008. A more detailed discussion of both gaseous and PM portable measurement systems is presented in section II. L.

Engine manufacturers commented that the model year applicability for the pilot program was too broad. Specifically, they argued that the plot should be limited to 2005 and 2006 model year vehicles because some 2002 through 2004 engine families were not specifically certified to meet NTE standards. We agree with the manufacturers to the extent that engine families which were not certified in compliance with the NTE requirements should not be tested in the manufacturer-run program. However, their recommended exclusion is also too broad. Instead, we will include model years back through 2002 in the pilot program, but we will only select engines which have been designed to comply with the NTE. This includes engines certified under consent decree requirements, California NTE regulations, and the voluntary NTE provisions contained in EPA guidance document VPCD 98-13 and Advisory Circular 24-3.⁵ EPA will only select engine families for which the manufacturer's Statement of Compliance specifically describes the engine as being designed to comply with the NTE either by regulation or voluntarily. For engines not designed to comply with the NTE, EPA does reserve the right to use the NTE as a means to evaluate the appropriateness of a manufacturer's auxiliary emissions control devices (*i.e.*, screen for defeat devices) as explained in the EPA guidance documents above. In such a case, EPA would conduct the testing and would not require the manufacturers to do so under the in-use program.

B. Engine Family Selection

1. Number of Engine Families

EPA currently estimates that 71 heavy-duty diesel engine families are being certified by 13 manufacturers that would potentially be eligible for in-use testing under this proposed program. Our goal in deciding how many engine families should be tested each year is to conduct enough testing to assure in-use compliance with the applicable emission standards, while at the same time keep the program from being overly burdensome for the engine manufacturers.

As a general premise, we believe it is a reasonable test all of a manufacturer's

⁵ Add titles, etc., for the two documents here.

heavy-duty diesel engine families over a four-year period. So, we will to designate up to 25 percent of a manufacturer's total number of engine families for testing per calendar year. The number of engine families that are tested in a given year will be based on the actual number of engine families certified by that manufacturer in that year, rounded up or down as appropriate. However, for the purpose of calculating the number of engine families certified in a given year, we will only include engine families with a production volume greater than 1,500 engines. This designation strategy will provide in-use test data for most of the diesel engine population and, at the same time, not overburden manufacturers that have several small production engine families. If a manufacturer has three or fewer engine families that exceed the annual 1,500 engine production limit, including when a manufacturer has no families with production levels above that limit, we will only test one engine family per year.

We will also cap the maximum number of families designated for testing over any four-year period to the average number of families for that manufacturer over that four-year period, rounding up or down as appropriate.

Several examples showing how many engine families we can designate each year for testing under the proposed in-use, manufacturer-run program are provided below. The illustrations are arranged in an increasing order of complexity. Additional examples and other relevant information are presented in the Technical Support Document for today's action.

The first two examples illustrate how we would calculate the annual number of engine families for testing using the 25 percent per year limit for engine families above the 1,500 units per year level, and when a manufacturer only has engine families with annual production less than 1,500 units per year. First, Manufacturer A has 12 certified engine families in production in a given model year, and only 8 out of the 12 families have annual production levels of over 1,500 engines. Then the maximum number of engine families we can designate for in-use testing from Manufacturer A in that calendar year is 2 (*i.e.*, 25 percent of 8 engine families). Second, Manufacturer B has 8 engine families, all with annual production less than 1500 engines. In this situation, we are limited to selecting only 1 engine family for testing in that calendar year.

The next two examples are somewhat more complex. The first of these

examples shows how the four-year limitation (*i.e.*, cap) on the maximum number of designated engine families works with a constant number of engine families over time. First, Manufacturer C has 3 engine families in production in each of four consecutive years, or an average of 3 engine families per year over a four-year period. Additionally, all the families have annual production volumes over 1,500 units. In this situation, 1 engine family per year can be designated for testing in three of the four calendar years. However, no family can be selected in one of the four years because the number of families tested would otherwise exceed the average number of families produced over the four-year period. Second, Manufacturer D produces 7 engine families each year during a four-year period and all the families are over 1,500 units per year. In this situation, we can select up to 2 engine families per year under the 25 percent annual limit (*i.e.*, 25 percent of 7 families is 1.75, which rounds up to 2). So, 2 engine families can be designated for testing in three of the four calendar years, but only 1 family can be tested in a fourth year because the four-year cap on the maximum number of engines tested would otherwise be exceeded.

The last example is the most complex. It once again illustrates how the four-year cap on the maximum number of designated engine families applies, but in this case for a scenario where the number of engine families varies over time, and when the fully enforceable program is just beginning (*i.e.*, the 2007 calendar year). Manufacturer E produces 6 engine families in the 2004 through 2009 model years and 7 engine families in the 2010 through 2014 model years. We can order testing for 2 engine families each in 2007, 2008 and 2009 under the 25 percent annual limit (*i.e.*, 25 percent of 6 families is 1.5, which rounds up to 2 using standard rounding practices⁶). In 2010, however we cannot order testing of any families because the average number of certified families in the four years preceding testing (including the current model year) is 6.25, rounded down to 6. Since we have already tested 6 engine families in the previous three years, we cannot test another engine family in the fourth year because the total number of engine

families in the four-year period would be greater than the average number of engine families produced in the past four years (*i.e.*, 6). In 2011, we can order the testing of 2 families under the 25 percent annual limit. Here, the average number of engine families in the four years preceding testing (including the current model year) is 6.5. This rounds down to 6, again using standard rounding practices. Since we have only tested 4 engine families in the previous three years, we can test another 2 engine families in the fourth year. For 2012 the average number of engine families in the four-year period is 6.75 (6 families in model year 2009 and 7 families in model years 2010 through 2012). Rounding up from 6.75, we can order testing for 7 engine families in the four-year period prior to 2012. Since we have only ordered testing for 4 families in the previous three years, we can order testing for 2 families under the 25 percent annual limit in 2012. Similarly, we can order the testing of 2 families in 2013. However, in 2014, we can order testing for only 1 engine family because the average number of families produced in the applicable four-year period is 7 and we have already ordered testing for 6 engine families in the previous three years.

Only the most recent and accurate sales information will be used to identify engine families with annual U.S.-directed production volumes of 1,500 engines or less when determining the potential number of engine families we may require a manufacturer to test in any year. When an engine family has reached the end of its production, the actual sales for an engine family that is already required to be submitted to EPA at the end of each model year as part of the certification program will be used for this purpose. If the engine family has not ended production and final sales are not available, then we may use the sales projection that is provided as part of a manufacturer's certification application.

After the number of engine families that are eligible for in-use testing is determined for a calendar year, we may select any engine family for testing that a manufacturer has in production that model year, or any other engine families produced by the manufacturer in previous model years covered by the testing program. We also reserve the right to designate any engine family previously tested under this program in a subsequent calendar year. This will allow us to evaluate the emission performance of heavy-duty diesel vehicles as they accumulate mileage over a number of years. It will also allow us to assess a manufacturer's remedy of any previous

⁶ See, "Guide for the Use of the International System of Units (SI), NIST Special Publication 811, 1995 Edition, National Institute of Standards and Technology, U.S. Department of Commerce." Under the rounding convention contained in this reference, when the first digit discarded is exactly 5, the last digit retained should be rounded upward if it is an odd number, but no adjustment made if it is an even number.

nonconformance problem, which was discovered under the proposed in-use testing program. When evaluating past model years for testing, we will also consider such factors as the likely number of vehicles remaining in service and their perspective mileage relative to their certified useful life.

We intend to make our engine family selections by approximately June 30 of each calendar year. Waiting until the mid-point of the calendar year to select engine families for testing increases the likelihood that EPA will be able to choose from a manufacturer's entire product offering for that same model year. Typically, all of a manufacturer's engines for a given model year are covered by a certificate of conformity by the mid-point of that same calendar year. For example, all 2007 model year engines are expected to be certified, in most cases, by June 30, 2007. This also allows EPA to calculate the number of engine families to be ordered for testing in a given calendar year without having to continually update that number and order further testing. In the event one or more engine families are certified by a manufacturer after June 30, we will update our calculation of the number of engine families we can order tested in that calendar year and, if appropriate, order further testing. We still may select any engine family by the end of that calendar year for testing, including the newly certified family, with the understanding that the manufacturer is allowed the same period of time for testing and reporting results from each engine family from the date of selection.

Regarding the testing and reporting period, we are allowing 18 months from the time an engine family is designated for testing until the results must be reported to us. A manufacturer may request up to six additional months to complete and report Phase 2 test results if there is a reasonable basis for needing more time. Further, a manufacturer may request an additional six month extension. More details on the testing and reporting period is presented in section II.K.1.

Engine manufacturers commented that EPA should specify a single point in time for identifying engine families that must be tested for that calendar year's selection since the number of certified families changes over the year. We believe the proposed selection protocol fairly balances our desire to maximize the number of engine families that may be designated for testing in any year, with a manufacturer's need for certainty in its planning process and a manageable testing burden. As already noted, manufacturers normally certify all or most of their engine families by

June 30 of each year. So a manufacturer will know either its complete liability under the in-use testing program or the bulk of its responsibility by that time. Because of the lead time normally associated with engine development and the certification process, a manufacturer planning to certify an engine family after approximately June 30 should calculate the possible in-use testing exposure associated with that action and plan accordingly relative to the expenditure of resources. This does not seem overly burdensome, since all selected engine families are provided the same testing and reporting period, regardless of the date the family was selected for testing (see section II.K.1. of this preamble for a discussion of the testing and reporting period). Therefore, we are adopting the engine family selection protocol as proposed.

2. Treatment of Nonconforming Engine Families

If there is clear evidence of an emissions nonconformity with respect to one or more of that manufacturer's families, a manufacturer may be required to test a number of engine families that exceeds the numerical limits described in Section II.B.1. above. More specifically, we may require any engine family for which such a determination is made be tested in the manufacturer-run, in-use NTE testing program in any subsequent year without counting toward the otherwise applicable limit on the number of families we may select in any year.

For the purposes of the in-use testing program only, if an engine family was subject to a recall action (voluntary or mandatory), that failure is clear evidence of a nonconformity for that engine family and any carryover engine family produced in a prior or subsequent model year.^{7 8} The remedied engine family may have been normally selected for testing under the proposed

⁷ Manufacturers designate carryover engine families during the certification process. The carryover designation indicates that the engine family for which a certificate is being requested is nearly identical to an engine family which has been previously certified. In such instances, the emissions results from the previously certified engine family are directly applied or carried over to the engine family for which a certificate is being requested.

⁸ Section 207 (c) of the Clean Air Act (CAA) authorizes EPA to require manufacturers to recall vehicles or engines for the purpose of remedying noncompliance with EPA regulations that occur during the regulatory useful life of the vehicle or engine. EPA may only require a recall when the noncompliance involves a substantial number of a class or category of vehicles or engines which have been properly maintained and used. (See CAA Section 207(c)). The procedures EPA uses to administer emissions recalls are described in 40 CFR Part 85 Subpart S.

in-use testing program, but did not pass the vehicle pass criteria and was subject to a recall action. Alternatively, the remedied family may have been recalled based on the results of an EPA in-use testing program. This linkage of carryover engine families helps ensure that manufacturers will be sufficiently motivated to remedy in a timely manner any noncompliance which is strongly suspected to cut across multiple engine families. As with other aspects of this program, we will consult with the manufacturer when contemplating a determination of clear evidence. An engine family selected using the "no count" designation may have never been tested under the proposed manufacturer-run, in-use NTE testing program, or it may have been tested but no remedial action was initiated based on the test results.

3. Small or Unavailable Engine Families

We recognize the possibility that a manufacturer may find it difficult or impossible to locate a sufficient number of vehicles from a designated diesel engine family to complete testing even after a diligent and good faith recruiting effort. This might especially happen for families with limited sales, or if a significantly older model year is designated for testing. Of course, we will attempt to avoid such an outcome in our engine family selection process. However, if a manufacturer encounters this problem and cannot complete either the Phase 1 or Phase 2 testing in the time frame or manner required, the manufacturer may ask us to modify the testing requirements for such engine family or designate a different diesel engine family for testing.

4. Engine Families Unsuitable for Testing

The Detroit Diesel Corporation (DDC) commented that certain chassis and applications are entirely unsuited for in-use testing, and that these should be excluded from the program. As an example, the company identified fire truck and emergency vehicles with unique engine families as falling into this category because they can not be instrumented without compromising the utility of the chassis. Also, DDC suggested that there are numerous applications where interior space constrains would not allow mounting the test equipment inside the cab and still provide for the presence of a technician. In this latter regard, the company noted that weatherproof systems are yet to be developed by instrument manufacturers. Consequently, DDC recommended that EPA not require in-use testing of engine

families constrained by such application considerations.

In general, EPA will avoid selecting engine families, and vehicle chassis and applications where testing with portable emissions sampling systems is infeasible, impractical, or unsafe. We anticipate that such testing challenges would generally be isolated to a specific sub-class of vehicle chassis or applications. Therefore, engine families are not expected to be wholly eliminated from consideration for reasons of portable testing incompatibility. To the extent incompatible engine families exist, they will likely be characterized by small volume annual production of fewer than 1,500 units. In general, these low production engine families will be selected for testing less frequently than their larger volume counterparts which makes it easier to avoid compatibility issues.

We also believe that the in-use testing requirements provide manufacturers sufficient latitude to avoid selecting vehicles which are not suitable for in-use testing. In our own in-use testing with portable emission measurement devices, we have successfully tested both fire trucks and emergency vehicles. Additionally, the final regulations allow a manufacturer to reject a particular vehicle from the program if it is found to be unsuitable without prior notification to EPA. Any rejected vehicle must be replaced with another perspective test vehicle, and the rejection reported to us in the manufacturer's normal in-use testing reports. We will provide additional guidance on the conditions that must be satisfied to reject a vehicle for this purpose.

We expect that concerns about the suitability of portable testing will continue to diminish as portable emissions measurement systems evolve into more compact, durable, user-friendly devices.

C. Phase 1 Testing Scheme

1. Focus of Initial Testing

The first phase of testing, Phase 1, is intended to quickly screen a designated heavy-duty diesel engine family for conformity with the applicable NTE standards. If enough of the engines tested from the family pass the initial screening, no additional testing of that family is required under the in-use testing program in that year. If the early test results from Phase 1 indicate a potential nonconformity, then several more vehicles must be tested to generate additional information regarding the significance of any potential problem, or

whether more testing in the next phase of the program, Phase 2, is needed to further evaluate the emissions performance of that engine family.

2. Engine Family Evaluation Criteria and Outcomes

For Phase 1 testing, a manufacturer must test a minimum of five and a maximum of 10 different vehicles within a designated engine family. The exact number of vehicles depends on how many of the tests exceed a specified numerical emissions limit, or the vehicle pass criteria, not to be confused with the proper maintenance and use criteria (see section II. E. of this preamble for a description of the vehicle pass criteria). Requiring up to 10 vehicle tests will provide sufficient information for us to decide if further testing or other information is needed to better evaluate a potential nonconformity, or if some form of remedial action may be warranted. This level of testing will provide a quick indication of an engine family's emissions compliance without being overly burdensome to engine manufacturers. Our multi-step engine family evaluation criteria and the outcomes associated with how many vehicles pass the in-use testing requirements at various levels within the testing hierarchy are described below.

A manufacturer will initiate Phase 1 by testing 5 vehicles. If all five satisfy the vehicle pass criteria (*i.e.*, 5 out of 5 pass), testing stops and no other action is required of the manufacturer for that diesel engine family under the program for that year. If only one of the initial test vehicles fails the vehicle pass criteria, the manufacturer will test another vehicle. The manufacturer may stop testing if the sixth vehicle satisfies the vehicle pass criteria (*i.e.*, 5 out of 6 pass). In the event that neither of the above conditions are met (*i.e.*, 4 or fewer out of 6 pass), the manufacturer must test a total of 10 vehicles.

Various outcomes are possible based on the observed number of vehicle passes or failures from the Phase 1 testing, as well as other supplemental information. If all four of the additional test vehicles met the vehicle pass criteria and only two of the original six test vehicles exceeded the criteria (*i.e.*, 8 out of 10 pass), testing stops and no other action is required of the manufacturer for that diesel engine family under the program for that year. When six or seven of the 10 test vehicles satisfy the vehicle pass criteria (*i.e.*, 6 or 7 out of 10 pass), the manufacturer must join EPA in follow-up discussions to determine whether any further testing, investigations, data submissions, or

other actions may be warranted. In such a case, three outcomes are possible. First, we may ultimately decide not to take further action if no significant nonconformity is indicated after a thorough evaluation of the causes or conditions that caused vehicles in the engine family to fail the vehicle pass criteria, and a review of any other supplemental information obtained separately by EPA or submitted by the manufacturer shows that no significant nonconformity exists. Testing would then stop and no other action is required of the manufacturer for that diesel engine family under the program for that year. Second, we may seek some form of remedial action from the manufacturer based on our evaluation of the Phase 1 test results and review of other supplemental information. Third, and finally, the engine manufacturer may undertake Phase 2 testing, if both EPA and the manufacturer agree this is the best course of action. Of course, a manufacturer may always voluntarily conduct Phase 2 testing.

In the event that fewer than six test vehicles comply with the vehicle pass criteria (*i.e.*, 5 or fewer out of 10 pass), the manufacturer must consult with us just as when six or seven out of 10 pass as described above. Once again, we may decide not to take further action if no significant nonconformity is indicated. If a possible nonconformity is indicated, the consultation may lead us to mandate Phase 2 testing even if the manufacturer does not voluntarily elect to do so. In situations where a significant nonconformity is observed during Phase 1 testing, we may order a recall action for the diesel engine family in question if the manufacturer does not voluntarily initiate an acceptable remedial action.

D. Phase 2 Testing Scheme

1. Initiation and Focus of Additional Testing

The primary purpose of Phase 2 test program is to gain further information regarding the extent to which, and under what conditions, the vehicles from the designated engine family are failing to pass the vehicle pass criteria. If appropriate, a manufacturer's testing may be focused on certain test conditions or a subclass of engines within the designated heavy-duty diesel engine family as outlined below. As described previously, EPA and the manufacturer may agree that it is appropriate to initiate Phase 2 testing if six or seven of the 10 test vehicles in Phase 1 satisfy the vehicle pass criteria. Phase 2 testing may also be mandated by us in the event that only five or fewer of the test vehicles in Phase 1 meet the

vehicle pass criteria. (See section II. C. for additional information regarding the conditions under which Phase 2 may be initiated.)

2. Number of Engines and Test Conditions

We may require a manufacturer to test up to 10 vehicles from the designated heavy-duty diesel engine family under Phase 2. We may, at our discretion, require the testing of fewer than 10 vehicles. A pass/fail determination for each vehicle will be made by comparing its measured emissions to the same vehicle pass criteria used in Phase 1. Testing up to 10 additional vehicles under this phase of the program will provide valuable information regarding whether the engine family conforms with the applicable requirements.

We may direct a manufacturer to test one or more specific engine and emission control or power configurations (*i.e.*, subclasses) within the designated engine family. Additionally, we may specify certain driving routes or other driving conditions (*e.g.*, temperatures, altitudes, geographic conditions, or time of year). As already discussed, the purpose of these additional specifications is to better understand the extent to which, and under what conditions, the vehicles in the engines family are failing to pass the vehicle pass criteria. Therefore, the specifications would be based on the Phase 1 test conditions that indicated a potential nonconformity.

We requested comment on whether EPA should similarly be allowed to direct a manufacturer to test specific engine configurations, test routes, and driving conditions for Phase 1 testing. We are not adopting that requirement based on our review of adverse comments we received from engine manufacturers. The comment and our response is contained in section II. J. of this preamble.

E. Vehicle Pass Criteria

Generally, the vehicle pass criteria require measuring the emissions from the test engine each time it operates for 30 seconds or more in the NTE control area. The NTE control area is a defined range of engine operating conditions that are subject to the NTE emission standards (see section I. C. 1. of this preamble for more information on the NTE control area). Each excursion into the NTE control area for thirty or more seconds is called an NTE sampling event. The 30 second minimum is intended to moderate the influence of short-duration, high intensity emission spikes that do not have a significant bearing on overall, real-world emissions

in the compliance determination. The average emission level of the NTE sampling event for each regulated pollutant is then compared to its corresponding NTE emission threshold. The NTE emission threshold is the sum of the applicable NTE standard, any in-use compliance margin already allowed by the regulations, and the new in-use measurement margin allowance. The vehicle pass criteria then require a comparison of the number of NTE sampling events for an individual pollutant that were below the respective NTE threshold to all of the sampling events from the test for that same pollutant. The NTE threshold is further described in section II. F. of this preamble. Also, for the first three years of the program, no sampling event may be higher than a specific maximum emission limit. The maximum emission limit for these engine families is described below.

More specifically, all valid NTE sampling events for a pollutant must be used in the vehicle pass determination. A valid NTE event is any sample that meets the 30 second minimum period described above, excluding any engine operation that is exempt from the NTE standards under the existing regulations. NTE carve-out provisions may either exclude certain operating points from the NTE engine control area or exempt engines from the NTE standards when operating in defined regions of the NTE engine control area. Currently, an engine may also be allowed to temporarily exceed the NTE standards under certain limited circumstances under the NTE deficiency provisions.⁹ If 90 percent of the valid NTE samples on a time-weighted basis for a regulated pollutant are no greater than the applicable NTE threshold, then the test engine meets the vehicle pass criteria for that particular pollutant.

However, model year 2007 through 2009 engines must meet certain additional requirements. For these years, 100 percent of the valid NTE samples for any regulated pollutant must also be less than two times (2X) the applicable NTE threshold, except when the engine is certified to a Family Emission Limit (FEL) for NO_x of 0.50 gram per brake horsepower-hour (g/bhp-hr) or less. In this case, 100 percent of the valid NTE NO_x samples must be less than two times the NTE threshold or less than 2.00 g/bhp-hr, whichever is numerically greater. While operation in the area of an approved deficiency or carve-out is excluded from being a valid

NTE event for the purposes of this in-use testing program, manufacturers must still employ appropriate emissions control during operation in these regions as required by the prohibition against defeat devices. For any operation which occurs within the area of an approved NTE deficiency, we will compare the measured emissions results to the emissions estimates the manufacturer provided for that deficiency at the time of certification so we can determine whether the deficiency requirements have been met.

The 90 percent criterion should provide a good indicator of compliance with the applicable emission standard, while at the same time allowing for certain emissions behavior that may be very infrequent or unusual in nature and, therefore, atypical of overall in-use operation. We have fashioned the additional maximum NTE criteria for 2007–2009 model year engines because we believe it appropriately reflects the capability of current control technology when robustly designed and properly maintained. We do not envision any situation where the current technology could not be designed to avoid emissions above these maximum criteria, even in the atypical situations mentioned above. EPA will evaluate the need for, and level of, any such NTE maximum criteria for 2010 and later model year heavy-duty diesel vehicles based, in part, on data from the proposed in-use test program, the capability of technology used to comply with the 2010 model year requirements, and other relevant test information. If we decide that such criteria are appropriate based on this review, any new requirements will be established in a rulemaking action. If we take no action, the maximum NTE criteria will cease to exist after the 2009 model year.

We are adopting the following multi-part methodology for determining if the engine complies with the 90 percent vehicle pass criterion for each regulated pollutant. First, find the average g/bhp-hr emission level for each valid NTE sample for a specific pollutant by dividing the total mass of measured emissions (*e.g.*, grams) by the amount of work performed during the NTE event (*e.g.*, brake horsepower-hour). (Note that this step is also used to determine compliance with the maximum NTE criteria for 2007–2009 model year engines as described above.) Second, determine for each valid NTE sampling event, whether the average emission level is less than or equal to the NTE threshold for that same pollutant. Third, calculate a time-weighted vehicle pass ratio for the pollutant, or the number of valid NTE sampling events that meet the

⁹For more information on NTE control area limits and exclusions, see 65 FR 59912, 59914 (October 6, 2000), and 66 FR 5040 (January 18, 2001).

applicable NTE threshold compared to the total number of valid NTE sampling events, weighted by the time of each valid NTE event. To do this, begin by summing the time from each valid NTE sampling event where the average emission level for each pollutant is no greater than the NTE threshold for that pollutant, and then divide this value by the sum of the engine operating time from all valid NTE samples. The resulting value is the vehicle pass ratio for that pollutant and test. However, if any single valid NTE sampling event exceeds 600 seconds or 10 times the length of the shortest valid NTE event, the time contribution for that event must be limited to the smaller of 600 seconds or 10 times the shortest event for the above calculation. These conditions on the maximum allowable duration for any single NTE event are intended to prevent a small number of very long sampling events from inappropriately overwhelming the time-weighted results.

A vehicle must meet the vehicle pass criteria for every individual pollutant in order for the vehicle to “pass” the test under the terms of the in-use testing program. Stated differently, failing the vehicle pass criteria, even for a single pollutant, counts as a vehicle failure for that particular test.

We want to clarify that the vehicle pass criteria used for the manufacturer-run, in-use testing program do not correspond specifically to the criteria for showing compliance to the NTE standards. That is, the fact that a vehicle meets the vehicle pass criteria under this program does not mean that the vehicle passes the NTE standards, or that the engine family is in full compliance with the standards, and the use of these criteria to show a vehicle “pass” in this program does not indicate that the criteria would be appropriate for NTE testing in other contexts.

The vehicle pass criteria, along with the engine family evaluation criteria of the Phase 1 and Phase 2 test schemes (described later), are designed to help make the best use of manufacturers’ and EPA’s resources in determining what further action is appropriate regarding that engine family. Therefore, the vehicle pass criteria, the definition of a valid NTE sampling event, the criteria for moving from Phase 1 to Phase 2, and all others aspects of the in-use testing program are solely for purposes of this manufacturer run, in-use test program and are not intended to revise, change, or interpret the NTE standards, the NTE test procedures, or to define compliance with the standards.

F. NTE Threshold Specification

The numerical value of the NTE threshold is defined as the applicable NTE standard, including any compliance margin already built into the standard for in-use testing, in addition to a new margin to account for the in-use measurement accuracy of the portable emission measurement systems. Therefore, these margins are added to the applicable standard or FEL to determine the numerical in-use compliance limit (*i.e.*, NTE threshold).

1. Not-to-Exceed Standards

NTE standards applicable to model year 2007 and later heavy-duty diesel engines apply to the exhaust emissions of non-methane hydrocarbons (NMHC), carbon monoxide (CO), particulate matter (PM) and oxides of nitrogen (NO_x) from these engines. The levels of the NTE standards for these pollutants are determined by applying a multiplier to the applicable FTP standard. The multiplier varies by pollutant and certification level, but it is generally either 1.25 times the FTP standard or 1.50 times the FTP standard. See 40 CFR 86.007–11(a)(4). For 2002–2006 model year engines tested under the pilot program, the applicable NTE limit used to develop the NTE threshold is 1.25 the FTP standard for that model year.

The FTP standards for 2002 and 2003 model year heavy-duty diesel engines are contained in 40 CFR 86.099–11, except that those engine families subject to NTE requirements under the Consent Decrees would use an NTE threshold based on the FTP levels found in the appropriate Consent Decree. The standards for 2004 to 2006 model year heavy-duty diesel engines are contained in 40 CFR 86.004–11. Those for 2007 and later model years are shown in 40 CFR 86.007–11.

2. Existing In-Use Compliance Margins

We previously established compliance margins for in-use NO_x and PM emissions testing of 2007 to 2010 model year heavy-duty diesel engines. For NO_x, the margin varies by mileage from 0.10 to 0.20 g/bhp-hr for engines certified to an FEL no higher than 1.3 g/bhp-hr. For PM, the margin is 0.01 g/bhp-hr. (See 40 CFR 86.007–11(h) for more details.)

3. New Measurement Margins for Portable Measurement Systems.

We are including new “accuracy margins” in the calculation of the emission thresholds for this program. The allowances are primarily designed to account for any differences between the accuracy of the portable emission measurement instruments for use on a

vehicle and the accuracy of those available for use in a laboratory. The allowance also takes into account the different way in which emissions are calculated in a laboratory versus in the field. Because of the continuing uncertainty regarding the specific accuracy of development for portable measurement systems (See section II. L.), we have chosen to adopt an interim set of accuracy margins at this time. These margins will be used only in the pilot program. As explained below, we are developing more precise accuracy margins for use in the subsequent fully enforceable in-use testing program.

a. Pilot Program Accuracy Margins.

During the pilot program years that precede the fully enforceable program, manufacturers will use interim margins that we believe represent an upper bound of the possible instrumentation variability based on our experience with portable and laboratory measurement systems. The pilot program accuracy margins are: NMHC, 0.17 grams per brake horsepower-hour (g/bhp-hr); CO, 0.60 g/bhp-hr; NO_x, 0.5 g/bhp-hr; and PM, 0.10 g/bhp-hr.

b. Final Program Accuracy Margins.

The margins for the fully enforceable program, *i.e.*, 2007 for gaseous pollutants and 2008 for PM, are being jointly developed through a comprehensive research, development, and demonstration program. The cooperative program is described in a Memorandum of Agreement (MOA) among EPA, CARB, and the engine manufacturers.¹⁰ The purpose of the MOA is to specify: (1) A detailed roadmap for developing data-driven margins based on a sound engine and vehicle test plans; (2) the respective roles and responsibilities of each party; (3) the exact statistically-based algorithms for calculating the data-driven margins; (4) how the final margins can be incorporated into the in-use testing regulations; and (5) the consequences of failing to complete the cooperative program in time to start either the gaseous or PM fully enforceable testing program as adopted in today’s action. See section II. N. of this preamble for a more complete description of the MOA.

As described at the beginning of this section, we chose the additive approach for incorporating the new portable measurement system accuracy margins into the NTE thresholds. We did this to

¹⁰ See “Memorandum of Agreement, Program to Develop Emission Measurement Accuracy Margins for Heavy-Duty In-Use Testing,” dated May XX, 2005. A copy of the memorandum is contained in the public docket for this rule and at the EPA/OTAQ Web site (<http://www.epa.gov/otaq/hd-hwy.htm>).

encourage instrument manufacturers to develop more accurate and repeatable portable measurement instruments in the future. A fixed allowance creates the same situation that already exists for laboratory measurement instruments, which encourages more accurate and repeatable instruments. That is, with no allowance or a fixed allowance, a more accurate and repeatable instrument will allow engine manufacturers to allocate a smaller fraction of their compliance margin to instrument error. We will revisit this issue in the future to determine if the final margins determined through the comprehensive program discussed above should be reduced or eliminated based on technical advances in these devices. To this end, we intend to adjust or phase-out such a margin through future rulemaking based upon improvements to the measurement equipment. We intend, however, that no future action to revise the final margins discussed above would take effect prior to 2010. The adjustment or phase-out would apply to any engine tested after such a rule became effective.

G. Considerations in Deciding on Remedial Action

In determining whether to pursue some sort of remedial action following Phase 1 and Phase 2 testing, we will consider supplemental information obtained separately by us, or submitted by the engine manufacturer. This information could include emissions data from additional tests performed with onboard portable emissions measurement devices, as well as from testing conducted using engine dynamometers or chassis dynamometers. The information may include an evaluation of, among other things: The margin by which any exceedence was above the NTE threshold; the number of engines that showed exceedences; the frequency and duration of any exceedences as compared with the aggregate amount of time that all of the test vehicles were operated within the NTE zone; the emissions of the test vehicles over the entire test route, including average(s); the projected emissions impact of the exceedences; and the relationship of the exceedences at issue to the engine family's ability to comply with the applicable standards or FELs. We will also consider any other data or factors relevant to determining whether to pursue some form of remedial action.

H. Quantity of Data Collected

The minimum time for data collection from a test vehicle is one full shift (work) day of operation, provided that

each test vehicle operates in non-idle modes for at least 3 hours during a typical shift day. Prior to the commencement of either Phase 1 or Phase 2 in-use testing, the manufacturer will screen-out from Phase 1 testing any vehicle that the manufacturer reasonably determines is unlikely to operate in non-idle modes for at least 3 hours over a full shift.

In the event that a selected test vehicle does not operate in non-idle modes for at least 3 hours over the full shift day, we are requiring that the vehicle must be tested over a second full shift day of operation. Testing shall not be required beyond the second full shift day even if that second day of testing also fails to yield, in the aggregate, 3 hours of vehicle operation in non-idle modes. After the second day of testing, the valid NTE sampling events will be evaluated according to the previously outlined criteria, even if less than 3 hours of non-idle data is collected. In the event that no valid NTE sampling events are recorded from a selected test vehicle, that vehicle will be deemed to have satisfied the vehicle pass/fail criteria for the purposes of this in-use testing program. At their option, manufacturers may conduct in-use testing for a longer duration.

While the minimum data collection requirement described above applies to both the pilot and fully enforceable programs, an evaluation of in-use test data prior to 2007 could change the final value for the data collection period. During the pilot program, we will perform a statistical analysis, in collaboration with EMA, of the available in-use testing data, particularly the data generated under the proposed pilot program described below, to determine the necessary parameters of the test regime. The end result could be either a longer or a shorter period of data collection, or other revisions to the in-use NTE testing program. We will, if appropriate, amend the regulations based on the outcome of this analysis.

I. Screening, Adjustment, and Mileage of Test Vehicles

To help ensure that testing is conducted on a diverse sample of "qualified" vehicles, our proposal identified a number of general pre-selection criteria for prospective test vehicles within a designated engine family. First, test vehicles must be obtained from at least two sources. We envision the most common source of engine will be fleet operators, but could also include independent operators. As stated previously, we believe manufacturers will be able to leverage existing relationships with its customers

or use this program as an opportunity to strengthen those relationships. Second, manufacturers must screen each selected vehicle for proper use and maintenance and reject those vehicles which have not been properly maintained and used. Third, prospective test vehicles must be screened to identify those that are reasonably likely to operate in non-idle modes for at least 3 hours over the course of a full shift day (see section II. H. of this preamble for more on the non-idle and shift day requirements). Fourth, engines or critical vehicle systems that have been tampered with, rebuilt, or subjected to major repairs that could affect emissions, will not be used in testing. Fifth, test engines must have their adjustable parameters set to the specifications contained in the vehicle/engine maintenance manual (*i.e.*, set to spec). Sixth, manufacturers must establish appropriate means to ensure that test vehicles are operated only on diesel fuels meeting the requisite specifications for the model year in which they were emissions certified. Seventh, and finally, no prospective test vehicles may be rejected because of high mileage, except for those whose engines that exceed their regulatory useful life.

We proposed that each manufacturer submit a general plan describing how they would identify, locate, and screen vehicle for in-use testing. The general plan was intended to cover all engine families selected for testing by EPA. The plan was to indicate whether the procurement and screening method may result in an emphasis on testing engines from a particular type of driving route or from a particular geographic area. The plan needed to identify the business relationships, such as with vehicle manufacturers or fleet operators, that would be used to recruit vehicles. The plan was to describe the methods that will be used to gather available information about whether vehicles and engines meet the seven general vehicle criteria described above, including any forms or procedures that will be used. Finally, the plan would cover situations not specifically addressed by the above seven cases. For example, how the presence of an onboard diagnostic (OBD) system trouble code or an illuminated malfunction indicator lamp (MIL) would be treated in the test program. Deviations from the general plan would need to be submitted to EPA for evaluation.

The engine manufacturers commented adversely on the mandatory nature of the general plan. They stated that the general plan requirements would unacceptably increase the burden of the overall test program by adding multiple

layers of costs, delays, and complexities. Further, they claimed that the requirement is not consistent with the "screening" nature of the Phase 1 testing as described in the settlement agreement. Manufacturers suggested that a more reasonable approach for dealing with this issue, as described in the preamble for the proposal, is for EPA and the engine manufacturers to work together to develop appropriately detailed guidance documents relating to recruitment, screening, and preparation of vehicles for testing. They also commented that if the general plan requirements were retained, EPA should specify its review time for plan approval.

We agree that it will likely be more efficient to obtain the information contained in the general plan through guidance rather than specific requirements in the regulations. We are currently developing the guidance with help from CARB and the engine manufacturers. The proposed general plan criteria, as well as other items, are included in the guidance. It also includes a template for manufacturers to submit the information suggested in the general plan. The manufacturers will not be required by the guidance to provide a general plan but if they do so, we would expect the criteria in the guidance to be followed.

We continue to feel that the information contained in the voluntarily submitted general plan will be valuable to us in proving a greater understanding of how the manufacturers conduct their testing programs and an increased confidence in the test results. Without this information, we will feel compelled to perform an increased level of our own in-use testing to validate the manufacturer's test results. We have reduced the potential burden associated with the voluntary submittal by making the plan sufficiently general to cover multiple engine families. We now envision an annual or maybe even a one-time submission of the general plan with manufacturers only highlighting deviations from the plan for a given engine family. The aforementioned template will accommodate a discussion of any deviations.

In response to comments, we have also identified protocols regarding the use of appropriate diesel fuels or biodiesel fuel blends in test vehicles and addressing vehicles with onboard diagnostic system (OBD) trouble codes or illuminated malfunction indicator lamps (MIL).

For test fuels, we proposed that manufacturers must establish appropriate means to ensure that test vehicles are operated only on diesel

fuels meeting the requisite specifications for the model year in which they were emissions certified. Engine manufacturers commented that EPA should provide a mechanism or approach to ensure no vehicle failures were due to bad fuel. Specifically, they requested that a real pre-testing method of ensuring that a vehicle has been operated only on proper diesel fuels must be developed and integrated into the in-use testing program to avoid improper and wasteful testing. The manufacturers also commented that the proposed provision would require testing to be performed using fuel meeting the specifications for certification fuel. Requirements to find and ensure the use of such fuel will be overly burdensome. Finally, they recommended that the test fuel provision be modified to specify that diesel fuel consistent with the engine manufacturer's recommendations be used for testing. This was a special concern related to the use of certain biodiesel fuel blends.

From the comments it is clear that engine manufacturers and EPA share the same goals regarding the use of test fuels that are appropriate for in-use testing, *e.g.*, they are representative of commercially available in-use fuels and a reasonable method be identified to avoid wasteful testing on inappropriate fuels. After further discussions with CARB and engine manufacturers on this issue, we are adopting the following approach.

A prospective test vehicle's fuel tank(s) may be drained and refilled with fuel conforming to the ASTM D975 specifications prior to conducting any test. Manufacturers may not provide special fuel for in-use emissions testing. If fuel is needed before initiating or during an in-use test, it must be procured from a local retail establishment near the site of vehicle procurement or screening, or along the test route. Alternatively, the fuel may be drawn from a central fueling source provided that the fuel used is representative of that which is commercially available in the area where the vehicle is operated. If the manufacturer can document that owner/operator of the prospective test vehicle has an established pattern of using one or more specific fuel additives and the fuel treatment is not prohibited in the vehicle's owner or operator manual, the manufacturer may continue to add that same fuel treatment for in-use testing. Also, the engine manufacturer may take pre-test and post-test fuel samples from recruited vehicles to ensure that appropriate fuel was used during in-use

emissions testing. All fuel test results must be reported to EPA.

Engine manufacturers have indicated a special concern with the use of biodiesel fuel blends in prospective test vehicles. We want to make it clear that the past use of biodiesel fuels is not grounds for automatically rejecting the vehicle from the test program. Biodiesel-fueled vehicles are acceptable if they use any biodiesel fuel blend (*e.g.*, biodiesel blends not in excess of B5) that is either expressly allowed or not otherwise indicated as an unacceptable fuel in the vehicle's owner or operator manual. A vehicle recruited into the program with a biodiesel fuel blend that is either expressly allowed or not otherwise indicated as an unacceptable fuel in the vehicle's owner or operator manual, may not be rejected from testing. Of course, vehicles using biodiesel fuel blends may have their fuel tank(s) drained and refilled with ASTM D975 compliant fuel or an acceptable biodiesel fuel prior to testing. The use of fuel additives is also allowed as described above.

Finally, if a test vehicle fails the vehicle pass criteria and the manufacturer can prove that a non-compliant ASTM diesel fuel or prohibited biodiesel fuel blend was used at any time during the in-use emissions test, that particular test may be voided. In this case, the vehicle will be treated as described above.

Turning to the OBD trouble codes and MILs, we proposed to prohibit manufacturers, as a general rule, from excluding vehicles from in-use testing if the vehicle had an OBD trouble code or MIL illuminated. Further, we proposed that manufacturers could not, as a general matter, remedy the cause of the trouble code or MIL illumination prior to or during in-use testing. However, the existence of these codes or lights during the screening process may indicate that the vehicle has been poorly maintained, tampered with, or improperly fueled. In these cases the manufacturer could request that the vehicle be rejected from the program. If a trouble code is set or malfunction light was displayed after the vehicle has been accepted into the program, this also would not be automatic grounds for eliminating a vehicle or aborting a test once it has begun. Here the manufacturer could either test the vehicle with the code or ask for approval to remedy the cause of the code if it is maintenance related. We provided a number of examples illustrating specific occurrences of OBD codes or MILs and the likely disposition of those vehicles relative to the testing requirements.

The engine manufacturers commented that testing with MILs or codes represents abnormal operation because owners of heavy-duty vehicles attend to these problems promptly in order to protect their business operations. Hence, they argued, that it does not make sense to require testing of vehicles with these conditions unremedied and it is inconsistent with the settlement document that calls for testing vehicles during their "normal operations." The manufacturers also stated that there is no comprehensive OBD program aimed at flagging emission exceedences or specific flaws in an engine's emission control system. Therefore, they believed it is unfair to presume that an activated MIL or trouble code necessarily would signify an emissions-related issue. Finally, manufacturers claimed that having to ask EPA for permission to reject or repair a vehicle would cause delays in conducting the program and be unnecessarily expensive.

Although there is currently no federal OBD requirement for heavy-duty diesel engines, EPA is in the early stages of developing such a requirement. The heavy-duty in-use testing program needs to be designed to accommodate the expected future OBD regulations. Further, manufacturers currently use diagnostic routines systems to varying degrees to assist service technicians in the repair of today's engines. To the extent those diagnostic routines identify potential problems with the emissions control system, it is appropriate for that information to be considered in the in-use test program, even if the OBD system is not designed to flag emission exceedences. At a minimum, even today's OBD systems can potentially identify flaws in an engine's emission control system that could cause an emissions exceedence. We continue to believe that OBD information can potentially be valuable in identifying potential in-use emissions exceedences and understanding their cause.

As in the proposal, EPA will require manufacturers to supply known OBD information both with regard to the history of the vehicles and their performance once accepted in to the manufacturer-run in-use testing program. This information is important in that it may indicate emissions-related problems relevant to whether the engines have been properly designed to meet emission standards for the useful life of the engine and whether the engines are in fact meeting such standards during the useful life of the engine.

However, EPA agrees with the comment that owners of heavy-duty vehicles are instructed and are likely to

attend to OBD related problems promptly. Therefore, manufacturers will not be required to test vehicles with a MIL illuminated or a trouble code set. We believe it is more appropriate to review emissions-related concerns identified by the OBD system without requiring manufacturers to use such vehicles in the in-use testing program, and the information that we receive from manufacturers will aid in this review. At their discretion, a manufacturer may generally test the vehicle with the MIL illuminated or trouble code stored, repair the vehicle and then test it (without EPA approval), or reject the vehicle from the test program as follows:

1. If a vehicle is received into the program and the length of MIL illumination or trouble code storage is consistent with proper maintenance and use, then the vehicle must be tested as received or repaired prior to testing. If the vehicle is repaired, the manufacturer must report the repair and the associated MIL illumination or trouble code to EPA;

2. If the vehicle is received into the program and the length of MIL illumination or trouble code storage is inconsistent with proper maintenance and use, the manufacturer has three options. First, test the vehicle as received. Second, repair the vehicle prior to testing and report the repair and associated MIL illumination or trouble code to EPA. Third, reject the vehicle from the test program and replace it with another vehicle. The manufacturer must report the repaired or rejected vehicle and its associated MIL illumination or trouble code to EPA; and

3. If a MIL goes on or a trouble code is set during an in-use test, the manufacturer has two options. First, stop the test, repair the vehicle, and restart the testing. In this case, only the portion of the full test results without the MIL illuminated or trouble code set would be used in the vehicle pass determination. Second, stop the test, repair the vehicle, and initiate a new test. In this case, only the post-repair test results would be used in the vehicle pass determination. Again, any repair, and the associated MIL illumination or trouble code must still be reported to EPA.

We intend to have developed a guidance that addresses a number of issues pertaining to vehicle recruitment, screening, maintenance, and testing. The document will also provide guidance in identifying the activity thresholds for OBD trouble codes and MIL illumination referred to above.

We also received several additional comments related to vehicle acceptance, vehicle selection, screening, and maintenance. First, we proposed to require that a manufacturer notify us prior to rejecting a prospective vehicle from the program for reasons other than failing to meet acceptance criteria contained in the general plan. The engine manufacturers commented that they should not be required to notify EPA that a candidate vehicle has been rejected if the owner decides not to make the vehicle available for testing. We agree that our proposal to require advanced notification in this instance could be burdensome. We have amended the regulations to clarify that no notification is required prior to rejecting a vehicle if the owner refuses to participate in the program. We have also clarified the regulations to require that a manufacturer must document and report the rejection to EPA as part of their normal reporting requirements under the program.

The second comment relates to making sure that the engines in the selected test vehicles are dissimilar. We proposed two basic different types of requirements to help ensure that the vehicles selected for testing within an engine family displayed variations in operating regimes and other usage characteristics. First, manufacturers were to recruit test vehicles from at least two different sources. Second, manufacturers were to submit a general test plan that was designed, in part, to identify if there was any bias, *i.e.*, pre-selection, in a manufacturer's recruiting program.

The Pennsylvania Department of Environmental Protection (PDEP) asked how we would ensure that a varying sample of engines within an engine family were tested. Specifically, they hypothesized that one fleet may have 10 vehicles with the same engine family, and that the engines may all have been produced on the same day under the same conditions. Further, PDEP suggested that it may be tempting for an engine manufacturer to test all these very similar engines. Therefore, they wondered if EPA had a strategy to ensure that test engines were produced at different times and for different fleets.

The concern expressed by PDEP is unlikely to be encountered since manufacturers are required to select vehicles from at least two different sources and submit to EPA detailed information on the vehicles they select. Further, even though the general plan is now a voluntary submission, we expect that manufacturers will normally provide this information. This will help ensure the manufacturer test programs

are reasonably diverse in test vehicles and conditions. Finally, EPA has the authority to conduct its own in-use testing if it has concerns with the representativeness of the manufacturers' test results.

The third comment regards setting adjustable parameters. We proposed that a manufacturer must set any adjustable parameter to the midpoint of its adjustable range prior to testing. Engine manufacturers asked that the requirement be expanded to allow an adjustment to the manufacturer's recommended setting. We agree with the comment and now allow an adjustable parameter to be adjusted to the manufacturer's recommended setting or the midpoint of its adjustable range prior to testing.

A fourth comment questions whether engine operating controls might be illegally recalibrated prior to testing. We proposed that engine manufacturers conduct a thorough screening of each engine before making any allowable adjustment or maintenance prior to testing. The results of this screening were to be reported to EPA. Also, manufacturers were required to screen each selected vehicle for proper use and maintenance and reject those vehicles which have not been properly maintained and used.

The PDEP commented that the process of implementing supplemental test procedures, e.g., the NTE, was developed because engine manufacturers programmed their engines to recognize when they were being tested by the federal test procedure and when they were traveling on the highway. They asked if we had contingencies to stop engine manufacturers from re-flashing the vehicle's electronic control module in order to pass the screening process.

Obviously, a manufacturer that "reflashed" a vehicle's electronic control module during the screening process would not be generating a representative sample of emission results which is required when deciding whether an engine family is complying with the emissions standards. Further, that manufacturer could be modifying the emissions control system such that the engine is no longer covered by a certificate of conformity. In that situation, an engine could be in violation of Section 203 of the Clean Air Act and subject to civil penalties. We have the authority to void the certificate of conformity for an engine family if the engine manufacturer did not meet its obligation under the in-use testing rules. We also require manufacturers to report any steps they take to maintain, adjust, modify, or repair the vehicle or its

engine prior to testing. Falsifying the emissions performance of an engine could constitute ground for voiding a certificate. A void certificate also results in a violation of Section 203 of the Clean Air Act and possible civil penalties because any sold engines are no longer covered by a certificate of conformity.

Finally, we do not anticipate manufacturers resorting to such practices and expect to physically participate in the manufacturer testing programs to some extent, including during vehicle screening and maintenance prior to testing. Finally, EPA will continue to conduct some level of its own in-use testing to validate the manufacturer's test results and gain confidence in their test programs.

J. Test Conditions

For all Phase 1 testing, we are requiring that test vehicles must be operated over normal driving routes, carrying routine loads during normal atmospheric/environmental conditions, with the vehicle's normal owner/operator doing the driving. Our intent is to record the emissions from the test vehicles as they are used and operated on a normal day-to-day basis.

For Phase 2 testing, we may direct engine manufacturers to use a generic or specific test route and other conditions that replicate those observed in the Phase 1 testing that indicated a potential nonconformity. These other conditions may include but not be limited to specifying the State and/or contiguous States in which testing must be performed, or specifying the time period (of no less than 3 months in duration during which the testing must be performed. (This latter condition may also be used to ensure prompt testing of Phase 2 vehicles or to ensure testing during periods of particular atmospheric conditions.) In deciding to make these elections, we will take into account lead time and vehicle availability constraints.

We requested comment on whether EPA should similarly be allowed to direct a manufacturer to test specific engine configurations, test routes, and driving conditions for Phase 1 testing when we have particular information suggesting that these stipulations may help focus testing on areas where EPA has particular emission-related concerns. We believed that such an initial focus might not only improve the overall effectiveness of the in-use program, but might reduce the number of tests a manufacturer may otherwise need to conduct if Phase 2 testing is conducted for any reason.

Engine manufacturers commented that Phase 1 testing is meant to quickly screen vehicles for NTE compliance. Further, the manufacturers argued that specifying detailed test conditions for Phase 1 adds unacceptable complexities, time constraints, costs, and vehicle recruitment difficulties, and should not be adopted. After reviewing the engine manufacturers objections, we are not adopting a "directed" testing allowance in Phase 1.

K. Reporting Requirements

1. Comprehensive In-Use Testing Reports

Engine manufacturers will report test data and other relevant information to EPA on a regular basis. Specifically, manufacturers must send us reports for all engines tested during a calendar year quarter no later than 30 days after the quarter ends. Alternatively, manufacturers may send us a report for individual engines within 30 days after testing is completed.

These reports will be comprehensive in scope. Manufacturers must detail all emissions data, engine operating parameters, test conditions, test equipment specifications, vehicle and engine information generated during the manufacturer test program (e.g., information on vehicle maintenance and usage history with reasons for rejected vehicles, restorative maintenance performed prior to testing), vehicle pass results, etc. Engine operating parameters include all information that is electronically sensed, measured, calculated, or otherwise stored by the engine's onboard computer. This must include, but is not limited to, engine speed, engine torque or brake specific fuel consumption, engine coolant temperature, intake manifold temperature, intake manifold pressure, and any parameter sensed or controlled in order to modulate the emissions control system. Manufacturers must also report any parameters used to modulate the emissions control system so that we can readily identify operation where an approved deficiency or carve-out applies, and the state of the engine during that operation.

Engine manufacturers will follow a standardized, electronic reporting format. We are currently developing the exact content and form of the reports with CARB and the engine manufacturers. Participation by CARB ensured that the reporting requirements are nationally consistent when it establishes an in-use NTE testing program of its own. The reporting requirements are detailed in the regulatory text accompanying today's

proposed rule. Additional details, including the final reporting format, will be published separately by EPA as a guidance document.

Engine manufacturers commented that our list of proposed data requirements was too extensive and overly burdensome. However, they acknowledged that the negotiated outline specifies the submission of a “* * * comprehensive report * * *.” The manufacturers also stated that the negotiated agreement called for a standardized reporting format to be jointly developed by EPA/CARB and the engine manufacturers. They noted that the proposed reporting format was not developed in the prescribed manner. Finally, they commented that until a jointly developed format has been completed, no final rule should be promulgated.

As noted above, we are developing the reporting format with the assistance of the engine manufacturers. We have entirely eliminated some of the items that we proposed manufacturers report based on their comments. These items have generally been moved to the record keeping requirements.

The engine manufacturers also commented that it may be more appropriate for manufacturers to submit reports upon the completion of Phase 1 or Phase 2 testing for a specific engine family instead of submitting reports on a calendar year basis for all engines tested during that quarter. They argued that this would consolidate information from a single phase of testing into a single report and would avoid the illogical inclusion of dissociated information from multiple families into the same report. Further, the manufacturers felt this would also ensure more timely reporting of information on completion of a phase of testing. Accordingly, they asked for the option of reporting either on a quarterly basis, as specified in the proposal, or 30 days after the completion of a specific phase of testing is concluded.

We envision that manufacturers will conduct engine family evaluations concurrently and that reporting in-use testing results on a calendar basis will provide the most timely and effective status updates of those testing programs. We also expect manufacturer testing to be continuous over multiple calendar quarters. A number of individual vehicles will likely be tested over that span of calendar quarters before a given phase of testing is complete. Waiting until the end of a phase of may not provide EPA sufficient opportunity to follow the progress of ongoing test programs. Our database will be designed to accept test results as they become

available and update the database records in a logical manner for easy reading.

As mentioned previously, we are allowing 18 months for the in-use testing of any engine family be completed and fully reported to provide manufacturers with adequate lead time to properly planning and conducting the in-use test program. A manufacturer may request up to six additional months to complete and report Phase 2 test results if there is a reasonable basis for needing more time. Further, a manufacturer may request an additional six month extension. A successful request for this added extension will be limited to extraordinary circumstances beyond the control of the manufacturer and its customers whose vehicles are being tested. The testing and reporting period begins from the date EPA officially notifies the manufacturer that an engine family has been designated for in-use testing.

Engine manufacturers commented that they were dissatisfied with both the requirement to complete all testing of a designated engine family within 18 months, and the option to request a six-month extension for Phase 2 testing if justifiable. They concluded that it may be impossible to meet these deadlines in some cases, although no specific examples were provided. Instead, they asked that the provision be deleted or modified to allow unlimited extensions where circumstances dictate.

We believe that allowing unlimited extensions seems unnecessary and could result in engine families exhausting their useful lives before meaningful compliance data is generated. We also think that 18 months is sufficient to complete testing under normal circumstances. Manufacturers agreed to this in the settlement document, which states that data from the testing of a designated heavy-duty on-highway diesel engine family will be completed and reported to EPA and CARB within 18 months from the designation of that family by EPA/CARB. In the proposal, we went even further and acknowledged there may be situations where an additional 6 months could be warranted due to unforeseen and infrequent events. Therefore, we adopted the test and reporting period as proposed.

Nonetheless, we acknowledge that there might be some instances when unforeseen complications may arise. In order to ensure the test program is successfully initiated with minimum burden to manufacturers, we will remain open to a request from any manufacturer for additional time beyond the 6 month extension. A

successful request for this added extension will be limited to extraordinary circumstances beyond the control of the manufacturer and its customers whose vehicles are being tested. The threshold for such consideration is intended to be extremely high, and the frequency of such manufacturer requests, much less EPA approval, extremely low. In no instance, would the second deadline extension exceed 6 months. Finally, to the extent that any such additional extensions are needed, we would expect these to become non-existent as manufacturers gain experience with the in-use test program.

We are also adopting our proposal that allows us to obtain more information from the manufacturer than is specified in the reporting requirements if it is needed to evaluate whether an engine family meets the in-use testing requirements. Engine manufacturers commented that this allowance was an open-ended requirement that was unreasonable and unacceptable.

The allowance for us to request additional information is a general requirement common to all of EPA's regulations. There is nothing unique about the heavy-duty in-use test program that would diminish the important of this requirement. Therefore, we have retained it in the final rule.

2. Notification of Individual Vehicle Failures

We are requiring that manufacturers must “quickly” notify us when certain individual vehicles fail the vehicle pass criteria. The accelerated reporting period for failing vehicles is designed to afford EPA the opportunity to participate in the diagnosis of vehicle failures and any resulting follow-up activities. Specifically, we are requiring such notifications at two different points in the testing scheme. The first is when an engine family has experienced three failures in Phase 1 testing. This is the point where a manufacturer is fully committed to testing a total of 10 vehicles. Further, this is the threshold where, at the conclusion of Phase 1 testing, a manufacturer must join EPA in follow-up discussions to determine whether or not any further testing (*i.e.*, Phase 2), investigations, data submissions, or other actions may be warranted. We require that a manufacturer notify us by email within 15 days when the initial review of the test data for a selected engine family indicates that a third failure in Phase 1 testing has occurred.

The second point is each time a vehicle failure occurs during Phase 2 testing. In this case, we require a more immediate notification because of the increased significance of such failures. These failures are significant because of the greater likelihood of a possible nonconformance and the possibility that testing needs to be focused on specific vehicle configurations, environmental conditions, etc. In this phase of the program, we will require that a manufacturer notify us by email within 3 days when the initial review of the test data for a selected engine family indicates that a vehicle failure has occurred in Phase 2 testing.

In the proposal, we specified a more comprehensive scheme for rapidly reporting vehicle failures. Each individual vehicle failure needed to be reported to us within 15 days of conducting the emissions test. The report was comprehensive in nature. It included detailed emissions and engine data from the test in addition to any diagnostic results and conclusions. The manufacturers opposed the requirement, stating that the provision was unduly burdensome and unnecessary.

We continue to find that accelerated reporting of vehicle failures provides us with an important opportunity to participate in the diagnosis of failing vehicles and any resulting follow-up activities. This is no different than the opportunity we provide manufacturers in our own test programs. In light of the comment, however, we have reconsidered how our objective can be achieved while minimizing any associated reporting burden. As a result, we eliminated the comprehensive nature of the reporting requirement and made the requirement a simple notification when a potential failure has been observed. We also reduced the frequency of such notifications to the two points in the testing scheme as described above. These two points in the testing scheme were selected because that is where failures clearly become of sufficient interest to us that we may want to have the opportunity to participate in the test program.

3. Carve Outs, Deficiencies, or Other NTE Control Area Exclusions

Depending on the applicable standards, several provisions in the existing heavy-duty diesel engine regulations allow a manufacturer to temporarily exceed the NTE standards under certain limited circumstances, or otherwise exclude defined regions of the NTE engine control zone from NTE compliance. (See 65 FR 59912 and 59914 (October 6, 2000), and 66 FR 5040 (January 18, 2001)). These exceptions

are also allowed in determining if a vehicle passes the vehicle pass criteria as described in section II. E. All such exclusions and associated test data must be fully described and submitted to us as part of the manufacturer's quarterly or 30-day emissions test result report that is required under the terms of the program.

More specifically, we are requiring that a manufacturer's report for each engine tested must describe the parameters that activate and de-activate each NTE deficiency as well as the engine load and speed points used to define an NTE carve-out tested under the program. This information must generally be in a form that can easily be used to determine whether a particular deficiency or carve-out was encountered when evaluating 1 Hz NTE test results. The information must be in a form that can be either loaded directly in EPA's electronic database or readily converted by us into the required data input structure.

For each NTE deficiency, the manufacturer must provide every engine and operational parameter(s) used to activate and deactivate the deficiency as well as the associated activation and deactivation thresholds. If more than one parameter is used to activate or deactivate a deficiency, the manufacturer must supply the logic that defines how those parameters interact. For any approved carve-out, manufacturers must provide the equation or equations that define the carve-out region as a function of engine load and speed. The engine computer must broadcast at 1 Hz, each parameter used to activate or deactivate a deficiency. EPA, CARB, and the engine manufacturers will jointly develop a template for submitting the information to EPA and CARB. This template will be included in a guidance document on this subject.

We requested comment on whether manufacturers should be required to electronically identify when the engine is operating in the area of an approved carve-out or deficiency and report that information as a data output to the portable emissions measurement systems. Flagging the presence of a carve-out or deficiency in such a manner appeared feasible as a relatively minor revision to the engine's on-board computer software. We envisioned the software changes would be limited to manipulating already broadcast or stored parameters. Electronic reporting of this information would ease the data analysis for the engines tested in the manufacturer-run, in-use testing program, and allow ready access to the same type of information for engines

that may be tested in our own program using portable emission measurement systems.

Manufacturers commented that the requirement was too costly and time intensive. They stated that valuable electronic control module (ECM) processing capacity would be used just to provide an "easy" electronic indicator for NTE operation. Manufacturers provided no data or other information to support their claim that the requirement was "too costly and time intensive." Upon further consideration, we recognize requiring manufacturers to add the electronic capability to flag NTE deficiencies and carve-outs as part of this rulemaking might present an unreasonable burden from the perspective of lead-time for the 2007 model year, which is less than two calendar years away. We continue to believe that electronically reporting NTE deficiency and 5 percent limited testing region flags on a real time basis is necessary to improve the efficiency of collecting and analyzing in-use test data. EPA believes that the 2010 time frame would provide adequate time for manufacturers to begin implementing such an ECM-based reporting requirement. We intend to pursue this in a future rulemaking regarding onboard diagnostic systems for heavy-duty vehicles.

Regarding the availability of such information for use in our own in-use testing program, we can always request such information from a manufacturer in lieu of receiving it as part of the ECM read out. However, we want to ensure that these requests receive special handling to expedite our testing. We are, therefore, requiring that manufacturers provide engine information which clearly identifies the parameters defining all NTE deficiencies and parameters defining all NTE carve-outs for an engine family and associated power level when requested. Further, that the deficiencies and carve outs must be reported in sufficient detail for us to determine if a particular deficiency or carve-out will be encountered in the emission test data from the portable emission-sampling equipment and field-testing procedures. Such information is to be provided within 60 days of the request from EPA.

4. Incomplete, Invalid, or Voluntary Tests

We proposed that engine manufacturers must report all results from emissions testing, including incomplete tests, invalid tests, and additional tests that are voluntarily conducted.

The engine manufacturers objected to reporting results from the types of tests described above. They stated that such a requirement is overly burdensome and intrudes on a manufacturer's right to conduct voluntary tests without EPA "supervision." Further, the manufacturers also specifically objected to reporting results when Phase 2 testing was voluntarily undertaken.

We continue to believe that the results of incomplete and invalid tests can yield valuable information regarding NTE emissions compliance and that it is legitimate to have access to this information within the context of the in-use program. However, to keep the reporting burden to a minimum, we will only require manufacturers to notify us in their formal reports when such tests were conducted for a selected engine family. Further, manufacturers will simply be required to keep all related test data and other relevant information as part of their recordkeeping in case we ask for it.

We disagree with the engine manufacturers suggestion that the results of testing should not be reported to EPA when a manufacturer voluntarily undertakes Phase 2 testing. In this instance, a manufacturer would be conducting the testing as a consequence of the Phase 1 test results. This follow-on testing is clearly a logical next step in the manufacturer-run, in-use testing program, and the results of such testing must be properly reported to EPA.

Regarding other voluntary tests that a manufacturer may conduct outside of the manufacturer-run, in-use testing program, we find that it is important for us to be aware when a manufacturer conducts such testing. Beyond providing valuable information, we want to prevent a situation where voluntary testing might be interpreted as having been conducted to screen test vehicles for passing results, which might then be submitted to us as valid tests under the in-use program. We do agree with the manufacturers, however, to the extent that our proposal could be interpreted as too broad and overly burdensome.

To accommodate these legitimate concerns, we have refined our requirements in this area as follows. First, we will limit this requirement to voluntary tests conducted on the same engine families that are being tested under the in-use test program. Second, we will focus the requirement on the period between the time the family is first selected for testing, until the final results of all testing for that family are reported to us. Third, as described above for invalid and incomplete tests, we will only require manufacturers to

notify us in their formal reports when such tests were conducted for a selected engine family. The notification must clearly describe the purpose of the voluntary testing and how it is unrelated to the vehicle recruitment, screening, and testing conducted under the manufacturer-run, in-use testing program. Fourth, and finally, manufacturers will simply be required to keep all test data and other relevant information as part of their recordkeeping in case we ask to review it.

L. Measurement of Emissions

We are adopting the test procedures in 40 CFR part 1065 subpart J, "Field Testing" for conducting any emissions testing required in this program, as well as any other onboard testing required for heavy-duty engines under part 86, subpart N. These revised requirements are being promulgated as a companion rule to today's final manufacturer-run, in-use testing rulemaking.

We proposed to adopt the test procedures in part 1065, subpart J, "Field Testing" for conducting any emissions testing required in the in-use testing program, as well as any other onboard testing required for heavy-duty engines under part 86, subpart N. In our proposal, we noted that changes were being made to the then current version of part 1065, and that those revisions were being published in a separate companion Notice of Proposed Rulemaking (NPRM). The relevant proposed test procedures were generally described, and we asked that comments on the companion NPRM be directed toward that notice.

Manufacturers commented that the comment period on the in-use testing program be extended to align it with that of the companion test procedure proposal. They argued that the field testing provision had not yet been published and that this made it impossible to comment in total on the proposed in-use testing program. We chose not to extend the formal comment period for this rule, but have continued to exchange information with affected companies over an extended period up to the conclusion of the final rule. Manufacturers were able to provide any comments regarding the interaction of the regulations for this rule and the rule revising part 1065 during the comment period for that rule. There were no comments on that rule that would indicate that the effectiveness of this rule will be undermined by the proposals for this rule. We have addressed each of the comments submitted, as described elsewhere in this document, and in the companion

rulemaking to adopt changes to the test procedures in 40 CFR part 1065.

1. Pollutants and Other Emissions

We are requiring the in-use measurement of the following pollutants from heavy-duty diesel engines: Non-methane hydrocarbons (NMHC), total hydrocarbons (THC), carbon monoxide (CO), oxides of nitrogen (NO_x), and particulate matter (PM). We are also requiring the measurement of carbon dioxide (CO₂) and oxygen (O₂) as a component of test measurement specifications and as a means of assuring quality control. Recognizing that experience may show that the effectiveness, durability and overall performance of new engine technologies and exhaust aftertreatment systems may demonstrate that in-use testing for certain pollutants is unnecessary, we will consider requests from the engine manufacturers to discontinue reporting and/or measurement of one or more pollutants from some or all engines based on future test experience.

In the proposal, we requested comments on requiring the in-use measurement of NMHC because it was not explicitly listed in the settlement agreement. We noted that the 2007 hydrocarbon standards for heavy-duty engines are written in terms of NMHC (or NMHCE) not THC. In addition, recent testing indicates that the traditional relationship of NMHC to THC in diesel exhaust (typically, NMHC is 98% of THC) is no longer applicable when aftertreatment like PM filters are used. Therefore, there is less of an exact correlation between THC and NMHC emissions and the traditional way of correlating such emissions in our regulations could lead to overestimation of NMHC emissions. Finally, NMHC can be measured on-vehicle without significant further effort. As a result, we believed the measurement of NMHC was justified.

Engine manufacturers objected to mandatory NMHC measurement. They also objected to being required to measure THC from diesel engines with catalyzed PM filters, arguing that the emission control technology results in negligible hydrocarbon emissions. However, the engine manufacturers wanted to have the option of measuring NMHC instead of THC if hydrocarbon measurement were required.

We are requiring the measurement of hydrocarbons in the in-use testing program and because NMHC is a regulated emission with an associated NTE standard, it must be reported. Commercially available portable measurement systems already report NMHC as the difference between

measured THC and methane (CH₄) via dual FID/cutter technology. This measurement technology already meets all the NMHC requirements in Part 1065. Additionally, part 1065 provides the flexibility to report NMHC as the difference between measured THC and measured methane (CH₄), or it may be reported as 0.98*THC. Therefore, manufacturers may optionally measure THC and report NMHC as 0.98*THC. However, we do not recommend this approach given the commercial availability of suitable portable technology that would yield a more accurate NMHC measurement.

Regarding the comment about “negligible NMHC” emissions, we believe that certain engines and exhaust aftertreatment systems can emit NMHC emissions at or above the NTE standard. This is particularly possible if the aftertreatment technology uses a hydrocarbon-based reducing agent, *e.g.*, diesel fuel, to “regenerate” the aftertreatment system. Nonetheless, in cases where a manufacturer can demonstrate that an engine and aftertreatment system combination negligible NMHC emissions, the manufacturer may petition EPA to waive associated measurement requirement, as we proposed and are now adopting.

Engine manufacturers also requested that hydrocarbon measurement not be required due to safety concerns with the hydrocarbon fuel used by the flame ionization detector (FID) in the portable analyzer to measure that pollutant. We have been using a unit produced by one manufacturer in our own in-use testing that is approved as safe by the Department of Transportation (DOT) for on-vehicle use. We expect that other manufacturers either have or will also DOT certify their devices for on-board emission measurement. In fact, we would not recommend using any portable device that utilizes FID fuel if it is not certified in conformance with DOT standards for such testing. Therefore, we disagree that the use of FID technology in the in-use test program necessarily poses a safety concern.

Manufacturers also commented that we should issue guidance that outlines reasonable conditions and procedures for manufacturers to follow in requesting an emission measurement waiver. We do not believe that a specific guidance document on this issue is necessary. The basic conditions and procedures for requesting an EPA waiver to avoid measuring a pollutant is obvious enough. Waivers will be reviewed on a case-by-case basis.

2. Portable Emission Measurement Systems—Status and Availability

Portable emission measurement systems will be used to measure the emissions and activity of vehicles tested in this program. Portable measurement systems have been under development for a little more than ten years. Currently, the status of these devices relative to their development and availability is different for gaseous and particulate emissions. Studies conducted by EPA, CARB, and the product manufacturers have shown that the technologies used in portable systems for gaseous emissions have been effective in accurately measuring emissions from in-use motor vehicles under the various conditions that could be expected in this test program. More specifically, commercial portable measurement systems have been available from a number of manufacturers since 2002 that measure THC, CO, and NO_x emissions at the requisite exhaust concentrations associated with 2007 and later model year NTE standards. In 2004, units were introduced that measure NMHC, although some extra work is being instituted to verify the accuracy and precision of these new systems. Also, EPA is working on a program, with cooperation from ARB and the engine manufacturers, under which portable emission measurement systems will undergo comprehensive testing, including the identification of data-driven “measurement allowances.” A measurement allowance is an emissions-specific, brake-specific value that will be added to the NTE standard to determine an NTE threshold for the purposes of the manufacturer in-use testing program. Its purpose is to account for any differences between the accuracy of the portable measurement systems in the field and the accuracy of laboratory measurement systems in a lab. Additional details on this latter program are presented in section II. L. 3.

The development of portable systems for measuring PM has proven to be more challenging than the development of similar systems for measuring gaseous emissions. Currently, prototype portable systems for measuring PM are available from equipment manufacturers, and we have tested them in the laboratory with encouraging results. This demonstrates that the overall technology has been identified, although more work is needed to demonstrate its accuracy and efficacy in the laboratory and in the field for the purposes of the in-use testing program. In addition, work is continuing to miniaturize the on-board

sampling devices and develop suitable exhaust dilution sampling techniques and hardware.

In our proposal, we acknowledged the significance of the development effort for PM portable measurement systems, especially with regard to being able to start the pilot program in 2005. Manufacturers echoed this concern in their comments. Specifically, we stated that if PM systems were not going to be available for the 2005 pilot program, we would consider delaying the PM requirement until 2006 or 2007, or temporarily relaxing the proposed equipment measurement tolerances. Consistent with that position, our current assessment of the state of portable PM emissions measurement systems has resulted in delaying the start of the pilot and fully enforceable programs for PM by one year from the dates contained in the proposed rulemaking.

We believe that the one-year delay for the PM pilot program (*i.e.*, 2006) will result in the availability of prototype portable devices capable of measuring these emissions as required. We also believe that the one-year delay for the fully enforceable program (*i.e.*, 2008) will result in useable, accurate, and precise portable units in time for use in that program. Our position is based on work that EPA, CARB, equipment manufacturers, and the engine manufacturers either have underway or have committed to performing to resolve the remaining development and verification issues, as described below. However, in recognition of the remaining uncertainties associated with these efforts, we have added a provision to the regulations that would suspend the in-use test program as it applies to PM measurement if we determine that fundamental technical problems with portable in-use PM measurement systems are not resolvable in a reasonable time.

As noted above, prototype portable units for measuring PM have been successfully tested in the laboratory, but further development work is needed to resolve some key challenges. The most significant of these are: Quantifying or weighing 30-second samples of semi-volatile hydrocarbons and dilute sulfuric acid PM at the NTE standard (*i.e.*, about 250 nanograms), proportionally diluting a partial flow of raw exhaust in order to sample PM at the same conditions as our laboratory procedures, and establishing a standard way of evaluating whether or not candidate systems actually meet these challenges. The work to resolve these remaining issues and to verify portable PM measurement technology in terms of

usability, accuracy and precision, can generally be divided into four program areas.

The first is our ongoing program that takes prototype portable PM measurement technology, which equipment manufacturers continue to refine, and compare the measurement capability of that hardware with current laboratory measurements. In this regard, we have recently acquired more sophisticated prototype devices for testing. We are evaluating a laboratory-scale quartz crystal microbalance (QCM) versus our laboratory PM measurement procedures. This evaluation is intended to verify whether or not prototype QCM technology reports PM similarly to the laboratory's reported values. We are confident that the QCM is a viable technology for the following reasons:

a. The QCM measures PM by electrostatically depositing mass on the QCM, and as PM deposits on the QCM its oscillating frequency changes in proportion to the total mass of the deposited PM. Because the QCM measures total PM mass directly by inertial acceleration, the QCM measures the same physical property; namely total mass, as compared to our laboratory filter-based procedure, which measures mass by gravitational acceleration (via a PM microbalance).

b. The design and construction of this technology is of a reasonable size and weight, and its power consumption indicates that this technology is likely to be sufficiently portable for on-vehicle use.

c. This PM PEMS technology is also specified to allow up to eight hours of continuous unattended operation so it will be appropriate for the HDIUT program.

d. Because QCM technology can measure "nano-gram" levels of PM, we believe that it is sufficiently sensitive to measure 30-second samples of PM at the NTE standard. For example, under typical dilution conditions in the NTE, 30 seconds of PM at the 2007 NTE standard (0.03 g/hp-hr) is in the range of 200 to 300 nanograms when sampled at one liter per minute, which is the sample rate of the QCM.

We intend to expand the work described above to include an already available portable partial-flow dilution system and a fully portable QCM.

The second is another internal EPA program that we anticipate beginning in the near future. In this program we will intend to develop techniques to generate "reference PM" in order to fully evaluate portable measurement systems using particles with similar physical characteristics and at the expected PM levels associated with the NTE standard

and over intervals as short as 30 seconds.

The third is the PM pilot program. In the pilot, engine manufacturers will use best-available portable measurement systems as part of their testing. This program will give engine manufacturers an opportunity to evaluate the usability of these portable devices. We expect that information gained from this pilot program will be helpful for both EPA, equipment manufacturers, and engine manufacturers to prepare for the 2008 enforceable PM program.

The fourth is our cooperative research, development, and demonstration effort with CARB and the engine manufacturers. Under this comprehensive program, portable PM emission measurement systems will be rigorously tested and data-driven "measurement allowances" will be identified. Additional details on this program are presented in section II.L.3.

Based on the development and demonstration programs described above, as well as the ongoing work of equipment manufacturers, we remain optimistic that portable systems for PM testing will be available for the pilot program in 2006 and the fully enforceable in-use program starting in 2008.

The technical support document that accompanies today's final rulemaking contains more information on the status and development of portable emission measurement systems.

Engine manufacturers had some specific comments regarding the availability of portable emission measurement systems. Detroit Diesel Corporation commented that EPA failed to recognize that in order to begin production of 2007 model year engines with an appropriate level of confidence that those engines will meet in-use requirements, the availability of in-use measurement equipment will be required long before production of those engines begins. Specifically, the company referred to the need to conduct field validation of final engine calibrations as early as the winter of 2005/2006. Further, that testing would require equipment that has the capability for accurate measurement at below 1 gram/bhp-hr NO_x development targets. Therefore, DDC concluded that it is unreasonable to expect that equipment being qualified at the 2.5 gram NO_x level should also be adequate for development of engines at a 1 gram NO_x level, and even more unreasonable to consider its use for developing at levels below the 0.2 gram NO_x standard.

Our assessment shows that portable measurement systems with the capability to reliably measure NO_x

emission at the 2 g/bhp-hr level have been commercially available since 2002. Given that engine manufacturers are likely to certify MY2007-MY2010 engines at around the 1.1–1.3 g/hp-hr level, the corresponding NTE standard from MY2007–2010 will be about 2 g/hp-hr, depending upon vehicle mileage and other NTE flexibilities. Therefore, manufacturers could have started such field validation of final engine calibrations as early as about 2002. In fact, in 2003 Detroit Diesel Corporation gave public presentations showing how they are already using PEMS to field validate final engine calibrations. Therefore, we disagree with the comment in this area.

Also, as described in the previous section (see section II.L.2.), portable units that measure THC and CO have also been available since 2002. Units capable of measuring NMHC have been available since 2004. (Further work is needed on these instruments to determine their accuracy and precision, but compliance with the associated NTE standard can optionally be demonstrated by measuring THC, as explained in section II.L.1. of this preamble.)

Based on other comments, we acknowledge that compliance with NTE standards will require design engineers to better understand their engines' emission behavior over a wide range of possible engine operation, but we do not feel that access to field-testing systems at an early stage of engine development is a prerequisite for the successful development of engines that meet the NTE standards. Though claims have been made that NTE standards might be interpreted to cover a theoretically infinite degree of variability during in-use operation, we expect that by evaluating a range of in-use duty cycles a consistent level of control for any additional operation may be predicted. This evaluation may be conducted solely in a laboratory by making careful measurements over a statistically sound sampling plan. Such a statistically-based test plan provides reasonable certainty that any future emissions from an engine is likely to be within certain bounds. This approach is frequently used to ensure reliability of engine parts and engine performance even though an engine manufacturer never tests such parts or performance over an infinite number of in-use conditions. We expect a similar approach to be taken when designing engines to meet NTE standards.

Furthermore, we do not believe that manufacturers will need to test an "infinite" or inappropriately large number of steady state and transient

combinations with field test equipment. Rather, manufacturers will be able to quickly narrow their test programs in the laboratory to focus in on those areas of engine operation where emissions come closer to exceeding the NTE standards. Engineering experience and logic dictates that manufacturers will not expend resources testing areas where emissions are well understood and well below the NTE standards. Therefore, we expect that manufacturers can develop and demonstrate engine calibrations using existing portable measurement systems and normal engineering practices.

In another comment, engine manufacturers stated that the PM requirement was infeasible. They noted that verified portable sampling systems do not exist at this time. Further, they commented that PM emissions should not be included in the program until such time as validated, properly field-tested, on-vehicle devices become commercially available. Finally, the industry association commented that it is uncertain whether any portable measurement system can actually measure the same physical quantities as the filter-based method that is used in the laboratory, which is the basis for the regulatory definition of particulate, but also the underlying certification of heavy-duty diesel engines.

We have accommodated the engine manufacturers' concerns with regard to the availability of suitable PM measurement equipment in a number of ways as described previously in this section. First, we have delayed the start of the pilot and fully enforceable programs for PM by one year from the dates contained in the proposed rulemaking to provide additional time to complete the development of these units. Second, we have committed to an internal EPA development program to resolve the remaining technical challenges with measuring PM emission onboard the vehicle. Third, we have entered into a comprehensive research, development, and demonstration program with CARB and the engine manufacturers to fully verify their usability, accuracy, and precision of portable PM measurement systems. Fourth, we have added a provision to the regulations that would suspend the in-use test program as it applies to PM measurement if we determine that fundamental technical problems with portable in-use PM measurement systems are not resolvable in a reasonable time. In summary, we believe there is an adequate basis to require PM measurement as part of the in-use testing program.

Regarding the comment that it is uncertain whether any portable measurement system can actually measure the same physical quantities as the filter-based method that is used in the laboratory, as noted above, quartz crystal microbalance measures PM by electrostatically depositing mass on the QCM, and as PM deposits on the QCM its oscillating frequency changes in proportion to the total mass of the deposited PM. Because the QCM measures total PM mass directly by inertial acceleration, the QCM measures the same physical property; namely total mass, as compared to our laboratory filter-based procedure, which measures mass by gravitational acceleration (via a PM microbalance).

The final comment regards measuring altitude (elevation) during an in-use test. In the draft technical support document, we noted that NTE testing will require specific information on a number of ambient conditions to determine if the engine is operating within the defined boundaries of the NTE or to calculate actual test results. We proposed to allow the direct measurement of these values with a specific technology or if the engine manufacturer determines that an engine's electronic control module (ECM) accurately quantifies these parameters, the manufacturer may rely on ECM values for those parameters. For altitude, we identified the use of a global positioning system (GPS) as a suitable technology.

Detroit Diesel Corporation recommended that EPA also accept the sensing of barometric pressure as an adequate surrogate for altitude determination. They noted that detecting barometric pressure and determining the corresponding altitude using standard nominal barometric pressure versus altitude relationship has been practiced by the company and found to be reliable.

We believe that the guidance given in the draft technical support document remains appropriate. Direct measurement of the test altitude through GPS will be preferred as opposed to using a surrogate, *e.g.*, sensing barometric pressure) for determining altitude. Our preference is based on the understanding that there will likely be errors associated with relying on surrogates such as barometric pressure, since there would be other factors, *i.e.*, ambient conditions, inappropriately excluded from the altitude calculations. Nevertheless, as the final technical support document continues to state, we will allow the engine manufacturers to use the engine's ECM to determine altitude, but only if it can be

demonstrated that it can be done accurately. This would be evaluated on a case-by-case basis.

A more detailed discussion of our response to engine manufacturers' comments regarding the status of portable particulate measurement technology is contained in the summary and analysis of comments document that accompanies today's final rule.

3. Measurement Accuracy Margin Development Program

Manufacturer comments on the NPRM raised objections to EPA's proposed in-use accuracy margin value of five percent applicable to all pollutants covered by the program. As EPA sought clarification on these comments from the manufacturers and input from CARB, it became evident that there were legitimate concerns regarding whether or not the proposed accuracy margins had been sufficiently proven. In an effort to provide further data to develop final accuracy margins, EPA, CARB, and the engine manufacturers (through the Engine Manufacturers Association (EMA)) have entered into a Memorandum of Agreement (MOA) that details a project for developing data-driven accuracy margins for the gaseous emissions and PM fully enforceable programs. (See section II.F.3.i. of this preamble for more on the pilot program accuracy margins.) The MOA addresses the basic scope and objectives of the research, development and demonstration (RDD) program, program milestones and schedules, implementation issues, and intended implications for the regulations.

This RDD program is expected to be completed in two main phases. The first phase addresses gaseous emission accuracy margins, the second phase addresses PM accuracy margins. A full test plan has been prepared for the gaseous emissions RDD program; the test plan for the PM program is addressed in the MOA, and is to be completed well prior to initiation of the RDD testing effort. Each of the two programs is expected to be completed in time to have data-driven accuracy margins for the respective fully enforceable programs, 2007 model year for gaseous emissions and 2008 for PM emissions. EPA intends to promulgate these accuracy margins and any related provisions through rulemaking.

The gaseous emissions RDD program contains four basic components. First, it will assess emissions, exhaust flow, and torque measurement variability of PEMS units incremental to the laboratory measurement. Second, the effect of environmental parameters and of on-vehicle time on measurement accuracy.

Third, on vehicle/trailer emission measurements versus PEMS emission measurements of the same operation. And fourth, it will consider manufacturer voluntary submissions of data that could be used to develop a margin component that accounts for the variability in key engine parameters used in the NTE brake-specific emission calculations. All of this information will be used to develop and validate a computer model which will produce a data driven accuracy margin for each of the gaseous emissions to be proposed as discussed above.

The PM emissions RDD program, scheduled to begin in 2006, will assess the same basic questions as laid out above. Its schedule is offset by approximately one year to allow for full development of the PM RDD test program plan and continued development of PM PEMS capability. The PM accuracy margins and any related provisions are expected to be promulgated through rulemaking, with the intention that they apply to the 2008 model year fully enforceable program for PM emissions.

The efforts under this MOA will be managed by EPA in close coordination with CARB and the involved engine manufacturers. Progress reports will be made publicly available. Interested readers are invited to review the full text of the MOA which is available in the public docket and at the EPA/OTAQ website for this rule.

M. Pilot Program

To ensure a successful launch of the fully enforceable program for gaseous emissions testing in calendar year 2007, there will be a more limited mandatory pilot program in calendar years 2005 and 2006 for gaseous pollutants (*i.e.*, nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NO_x)). Similarly, the fully enforceable program for PM will be preceded by a pilot program for that pollutant in calendar years 2006 and 2007. Additionally, one or both of the pilot programs could be extended, and the fully enforceable program delayed, in the unlikely event that the process of identifying the final accuracy margins, discussed above, is significantly delayed beyond the originally scheduled completion dates.

We will designate engine families for testing under the pilot program as described in section II. B. of this preamble. In all likelihood, we will select 2002 through 2006 model year engines for testing under the gaseous pilot program, and 2002 through 2007 model year engines under the PM pilot program. As discussed above, we will

only designate families that have been designed to comply with the NTE. After receiving our selections, manufacturers will then conduct in-use testing based on the Phase 1 testing criteria according to the scheme set forth in section II. C. of this preamble. Under those requirements, engine manufacturers must test up to 10 vehicles per designated engine family. However, Phase 1 testing will be limited to a total of five vehicles for engine manufacturers participating in the program to develop the final measurement accuracy margins for portable emission measurement systems as described in section II. L. 3. of this preamble. During the two-year pilot programs for gaseous and PM emissions, both EPA and the heavy-duty diesel engine manufacturers will gain valuable experience with the in-use testing protocols, and the generation, interpretation, and reporting of in-use NTE emissions data.

The evaluation of these data for compliance purposes is limited to screening for exceedences of the FTP certification standards as well as the potential use of defeat devices as outlined in prior Agency guidance. The pilot program data could also be used to screen consent decree engines certified to pull ahead NTE requirements for compliance with the applicable NTE limits. If the test results for manufacturers subject to the full pilot program clearly show that the designated heavy-duty diesel engine family passes the Phase 1 testing criteria (*i.e.*, 5 out of 5, 5 out of 6, or 8 out of 10 vehicles pass), no further testing will be required of that engine family in that year. If the designated engine family does not clearly pass the test criteria (*i.e.*, 7 or fewer out of 10 vehicles pass) we will not pursue any form of remedial action based solely on that data. For manufacturers participating in the program to develop the final accuracy measurement margins that must test five vehicles per designated engine family, we will likewise not pursue any form of remedial action based solely on that data. However, we may utilize these latter test results in conjunction with our own test data and other information to assess or pursue any appropriate enforcement or regulatory action.

We proposed that the certificate of conformity for an engine family may be voided if the engine manufacturer did not meet its obligations under the in-use testing rules. International Truck and Engine Company commented that during the settlement negotiations, all parties recognized that the 2005 and 2006 pilot programs must remain flexible in order for it to work.

Therefore, the potential consequences of voiding a certificate of conformity for failing to strictly adhere to the 2005 and 2006 pilot programs directly contradicts the cooperative nature of the in-use testing program.

We agree with the commenter that the pilot program needs to remain flexible and cooperative in nature. However, we are retaining the provision for the pilot program as a way to assure that all engine manufacturers participate in that part of the mandatory in-use testing pilot program. We do not anticipate a reason to revoke a certificate of conformity if the manufacturer shows a good faith effort in conducting the pilot program.

N. Public Availability of In-Use Testing Data

We noted in the proposal that in-use test data reported under the program would be available to the general public for review and analysis. The engine manufacturers objected to providing public access to all test data and underlying information. They specifically stated that information pertaining to how a manufacturer "controls" an engine when achieving in-use emissions compliance is confidential business information and must be treated as such. Manufacturers stated that public information should be limited to emission results and vehicle pass ratios.

Our goal is to ensure the confidentiality a manufacturer's confidential business information (CBI) while making the in-use test program as transparent and useful to others as possible. After carefully considering how to balance these competing interests, we will make the following information publically available: Engine family, model, and rating identification; description of test route and test conditions; engine speed and torque, mass emissions, and work performed each at a 1 Hz interval; emissions results (for each valid NTE event); vehicle pass ratio; and any other information needed to calculate the summary emissions results and the NTE zone for that engine. We will also make available a generic indication as to whether a deficiency or carve-out has been encountered for each second of the test. Information that a manufacturer may designate as CBI will be safeguarded and withheld from public release by the Agency subject to EPA's CBI regulations.¹¹ Except as listed above as

¹¹ If EPA receives a request under the Freedom of Information Act for records relating to manufacturers' required in-use testing, it is EPA's standard operating procedure to initially deny the

publically available, such information will include, but is not limited to, engine operating and control parameters designated CBI during the certification process (including those associated with auxiliary emissions control devices) and the information necessary to identify specific and complete regions of the NTE control zone where: (1) A manufacturer has been granted an allowance by EPA to temporarily exceed the NTE standards under certain limited circumstances (*i.e.*, deficiencies), or (2) the emissions contribution from a portion of the NTE zone has been limited in determining compliance with the NTE standards (*i.e.*, carve-outs).

O. Implications for Other EPA Programs

1. EPA Testing and Supplemental Information

EPA reserves its preexisting authority to conduct repeat testing or initiate our own in-use testing of a manufacturer's heavy-duty diesel engine family. The purpose of this testing would be primarily to verify and supplement, not duplicate, the testing program to be conducted by manufacturers. Therefore, we do not intend to conduct routine in-use NTE testing of engines or engine families that satisfy the Phase 1 testing criteria, unless new information indicates that a potential nonconformity exists. We will also inform and invite the affected manufacturer to observe any in-use testing that we may conduct which is related to this program.

2. Selective Enforcement Audit (SEA) Testing

We will limit the existing SEA program after full implementation of the manufacturer-run, in-use program solely to instances where credible evidence indicates the existence of a nonconformity. Such evidence may include: Past noncompliance occurring in new engines or very early in the life of in-use engines, a manufacturer's quality assurance/quality control (QA/QC) reporting that identifies or otherwise indicates a problem, a significant number of consumer complaints or defect reports, or test data of any type.

In general, we anticipate that a robust, mature manufacturer-run in-use program would significantly reduce the role SEA plays in EPA's compliance program. Assembly line emissions

audits ensure that the prototype emission control designs approved during the certification process successfully transfer into mass produced engines. More specifically, SEAs evaluate whether manufacturers' design enough compliance margin into the certified emissions levels to account for the emissions variability inherent to the design and manufacture of a particular engine and emissions control system.

It is expected that the in-use program will require manufacturers to target emissions performance with enough compliance margin below the standards to account for expected in-use deterioration, and that this margin will exceed normal emissions variability experienced in new engines. The use of aftertreatment as the primary means for emissions control is expected further to reduce EPA's reliance on SEAs as a compliance tool. These systems typically function at high efficiency levels and without catastrophic failure on newer engines. If problems were to occur, it is often only apparent after the aftertreatment-equipped engine has been in service for some period of time. During SEA testing, the aftertreatment system will have experienced little mileage accumulation and, therefore, is expected to perform at essentially undeteriorated levels. For these reasons, EPA believes SEA testing will be less critical for a vigorous enforcement program.

As mentioned previously, there are circumstances where SEAs would still be warranted. Those situations typically involve known or expected problems which occur relatively early in the engine's useful life, but have not been remedied by the manufacturer. In those cases, it is less expensive and more effective to remedy the problem well in advance of in-use testing. EPA is also interested in occasionally conducting SEAs for small engine families that may not be the focus of testing under the manufacturer-run, in-use testing program.

3. Deterioration Factor Testing

Under our current emissions certification program requirements, manufacturers of heavy-duty diesel engines are allowed considerable flexibility in generating deterioration factors (DFs). The regulations only generally specify how to stabilize the engine system prior to conducting the durability testing. All other aspects of generating DFs, such as the durability test cycle and the duration of the testing, are left to the good engineering judgement of the engine manufacturer. Given this latitude, manufacturers have

settled on a fairly standard set of methodologies for generating DFs.

Deterioration factors are generated in the laboratory using an engine dynamometer. After the engine is stabilized, it is exercised over a durability driving cycle for a period of time or mileage established by the engine manufacturer as mentioned previously. Emissions are measured over this cycle at intervals specified by the engine manufacturer. The measured emissions are plotted as a function of time or mileage and a statistical curve fitting method is used to calculate emissions deterioration over time. Since the emission tests are not typically performed to the end of engine's useful life, the curve-fit is extrapolated to estimate useful life emissions. Either the measured initial, early-life emissions are subtracted from the extrapolated useful life emissions (additive DF), or the useful life emissions are divided by the early-life emissions (multiplicative DF), depending on the emissions control technology, to calculate the DF and arrive at the official deteriorated certification test results.

The 2004 and 2007 low emission standards required for heavy-duty diesel engines has placed the efficacy of how these traditional DF methodologies are developed and applied under increased scrutiny by both EPA and the engine manufacturers. The reasons are twofold. First, aftertreatment and add-on emissions control technologies such as cooled-EGR are more prone to deterioration compared to past engine designs. Second, compliance with the emissions standards becomes more sensitive to the uncertainty in the emissions trends resulting from these common DFs methods as the stringency of the standards increases. In the past, manufacturers could target emissions far enough below the relatively relaxed emissions standards in order to account for the inherent DF variability. The increased stringency of the 2004 and 2007 standards have reduced those traditional compliance margins, leaving less headroom to account for DF uncertainty. Exacerbating the issue is the traditional use of multiplicative DFs which mathematically result in a larger deteriorated emissions value compared to an additive approach.

The most likely solution for addressing the loss in confidence with current DF methods in the near term is for EPA and the engine manufacturers to work cooperatively to establish more robust accelerated DF methodologies in the laboratory. This would provide more certain deteriorated certification emission results. Discussions on such a solution have already started on an

requestor any responsive records containing information submitted under CBI claims by the manufacturers. The manufacturers who submitted the information under CBI claims will be required to substantiate their claims, and the EPA Office of General Counsel will make a final determination of confidentiality for the information. See 40 CFR 2.204 and 205.

informal basis with individual manufacturers and will become more structured with industry in the near future.

As a longer term approach, it may be possible to reduce or eliminate the current laboratory-based DF methods by using the test results generated as part of the proposed manufacturer-run in-use testing program or test data from other in-use testing that utilizes portable emission measurement systems to more accurately predict in-use deterioration. For example, a manufacturer may be able to demonstrate that DFs generated from the in-use data are superior predictors of useful life deterioration, or at least correlate well with the more traditional laboratory approach to developing these factors. To this end, we intend to assess the generation and submission of DFs based on the proposed 2005 and 2006 pilot program. We will examine potential ways to diminish or eliminate burdens on manufacturers of generating and submitted DFs, while still generating DFs that accurately predict in-use deterioration. Any appropriate revisions for generating DFs would be promulgated in a subsequent rulemaking action, particularly in the rulemaking reexamining the accuracy margin discussed in II. F. above.

P. Limitations of Warranty Claims

An exceedence of the NTE found through the in-use testing program is not by itself sufficient to show a breach of the warranty under section 207(a)(1)(A) or (B). A breach of this warranty would also require either: (1) That, at the time of sale, the engine or vehicle was designed, built and equipped in a manner that does not conform in all material respects reasonably related to emission controls to the engine as described in the application for certification and covered by the certificate, or (2) a defect in materials and workmanship of a component or part that causes the vehicle or engine to fail to conform to the applicable regulations for its useful life. To the extent that in-use NTE testing does not reveal such a material deficiency at the time of sale in the design or manufacture of an engine compared to the certified engine, or a defect in the materials and workmanship of a component or part, test results showing an exceedence of the NTE by itself would not show a breach of the warranty under section 207(a)(1).

III. Economic Impacts

The costs associated with the rule to implement a manufacturer-run, in-use

NTE testing program for heavy-duty diesel engines depends primarily on how many vehicles are eventually tested under the Phase 1 and 2 testing schemes. This is difficult to estimate because the actual number for each designated engine family depends on how many vehicles pass, or fail, the vehicle pass criteria at various points in the tiered testing design. It is also highly dependent on how manufacturers chose to conduct the test program and the availability of test vehicles. However, based on our experience with in-use emissions testing, including the development and use of portable measurement systems for compliance testing, and comments from an engine manufacturer, we identified a reasonable testing scenario that allows us to estimate the potential costs associated with the program. This analysis is based on 13 manufacturers who certified 71 engine families in 2005. Costs are in 2004 dollars.

Our analysis shows a total cost of approximately \$1.6 million per year for the case where no manufacturer must test more than the minimum number of vehicles under Phase 1 (*i.e.*, 5 vehicles per engine family). If all manufacturers were to test the maximum number of vehicles required under Phase 1 (*i.e.*, 10 vehicles per engine family), the total cost would be about \$1.7 million per year. In the most unlikely worst case scenario where all manufacturers must test the maximum vehicles in Phase 1 and 2 (*i.e.*, 20 vehicles per engine family), the total cost would be about \$2.1 million per year. Our best estimate of the overall cost of the proposed program is \$1.7 million per year for the entire industry. The Technical Support Document for this rule contains a detailed description of our economic analysis.

Overall, while not insignificant, these costs are quite low compared to other in-use compliance programs. Moreover, they are especially attractive in comparison to a more traditional in-use testing program where the engine must be extracted from the vehicle and tested on an engine dynamometer in the laboratory. In that situation, each engine test could cost \$25,000 if the vehicle could be procured from an in-use fleet.

IV. Public Participation

In the proposed rule, we invited public participation in a public hearing and a comment period for written comments. We held the public hearing on July 15, 2004 to receive comments on the rule. Only the on-highway, heavy-duty diesel engine manufacturers that are affected by the rule presented testimony. We also received written

comments from about 10 organizations, ranging from State offices of environmental protection to the engine manufacturers. The previous sections of this preamble describe the significant comments and our responses. The Final Technical Support Document addresses the full range of comments.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. The Executive Order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget reviewed this rule under the provisions of Executive Order 12866. Any new costs associated with this rule will be small. See the Technical Support Document for more information.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0287 (EPA ICR #1684.08). The Agency will collect information to ensure compliance with the provisions in this rule. Section 208(a) of the Clean Air Act requires that engine manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. We will consider confidential all information meeting the

requirements of Section 208(c) of the Clean Air Act.

As shown in Table V-1, the total annual burden associated with this proposal is about 3,614 hours and \$1,669,000 based on a projection of 13 respondents. The estimated burden for on-highway, heavy-duty diesel engine manufacturers is a total estimate for both new and existing reporting

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; and transmit or otherwise disclose the information.

TABLE V-1.—ESTIMATED BURDEN FOR REPORTING AND RECORDKEEPING REQUIREMENTS

Industry sector	Number of respondents	Annual burden hours	Annual costs
Engines	13	3,614	\$1,669,000

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration (SBA)'s regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. The test procedures that are established by this rule pertain to heavy-duty diesel engine manufacturers. EPA has previously analyzed this category for impact on small entities when emission standards were finalized for this category of engines in October of 2000 (65 FR 59895, October 6, 2000). At that time, EPA noted that two small entities were known to be affected. Those entities were small businesses that certify alternative fuel engines or vehicles, either newly manufactured or modified from previously certified gasoline engines. The test procedures adopted by this action do not pertain to

the engines manufactured by these small businesses and recent analysis supports that there are no additional small businesses that would be impacted by this action.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the

development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates for State, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule significantly or uniquely affects small governments. We have determined that this rule contains no Federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. The requirements of UMRA, therefore, do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a

regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 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."

This rule does not have tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and impose compliance costs only on heavy-duty diesel, on-highway engine manufacturers. Tribal governments will be affected only to the extent they purchase and use equipment with regulated engines. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, "Protection of Children from Environmental Health

Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is 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, Section 5-501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104-113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards for the testing required under this final rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). The Office of Management and Budget reviewed this rule under the provisions of Executive Order 12866. Any new costs associated with this final rule will be minimal.

VI. Statutory Provisions and Legal Authority

Statutory authority for the engine controls adopted in this rule is in 42 U.S.C. 7401-7671q.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 3, 2005.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318 1321, 1326, 1330, 1342 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

■ 2. Section 9.1 is amended in the table by removing the heading "Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures" and adding the following new heading in its place "Control of Emissions From New and In-Use Highway Vehicles and Engines" and a new entry under the heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

*	*	*	*	*
40 CFR citation				OMB control No.
*	*	*	*	*

Control of Emissions From New and In-Use Highway Vehicles and Engines

*	*	*	*	*
86.1920—86.1925	2060—0287			
*	*	*	*	*

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 3. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 4. Section 86.1 is amended by adding an entry at the end of the table in paragraph (b)(1) and adding paragraph (b)(6) to read as follows:

§ 86.1 Reference materials.

(b)	*	*	*	*	*
(1)	*	*	*	*	*
Document No. and name					40 CFR part 86 reference
ASTM D 975–04c Standard Specification for Diesel Fuel Oils					86.1910

(6) *NIST material.* The following table lists material from the National Institute of Standards and Technology that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the Government Printing Office, Washington, DC 20402 or download them from the Internet at <http://www.nist.gov/>.

Document No. and name		Part 86 reference
NIST Special Publication 811, Guide for the Use of the International System of Units (SI), 1995 Edition.		86.1901

■ 5. Section 86.007–11 is amended by adding paragraph (a)(4)(vi) to read as follows:

§ 86.007–11 Emission standards and supplemental requirements for 2007 and later model year diesel heavy-duty engines and vehicles.

*	*	*	*	*
(a)	*	*	*	*
(4)	*	*	*	*
(vi) Manufacturers are not required to provide engine information exclusively related to in-use testing as part of initial certification. However, upon request from EPA the manufacturers must provide the information which clearly identifies parameters defining all NTE deficiencies described under paragraph (a)(4)(iv) of this section and parameters defining all NTE limited testing regions described under § 86.1370–2007(b)(6) and (7) that are requested. When requested, deficiencies and limited testing regions must be reported for all engine families and power ratings in English with sufficient detail for us to determine if a particular deficiency or limited testing region will be encountered in the emission test data from the portable emission-sampling equipment and field-testing procedures referenced in § 86.1375. Such information is to be provided within 60 days of the request from EPA.				
*	*	*	*	*

■ 6. A new § 86.1375–2007 is added to read as follows:

§ 86.1375–2007 Equipment specifications for field testing.

For testing conducted with engines installed in vehicles, including field testing conducted to measure emissions under Not-To-Exceed test procedures, use the test procedures and equipment specified in 40 CFR part 1065, subpart J.

■ 7. A new subpart T is added to read as follows:

Subpart T—Manufacturer-Run In-Use Testing Program for Heavy-Duty Diesel Engines

Sec.

86.1901	What testing requirements apply to my engines that have gone into service?
86.1905	How does this program work?
86.1908	How must I select and screen my in-use engines?
86.1910	How must I prepare and test my in-use engines?
86.1912	How do I determine whether an engine meets the vehicle-pass criteria?
86.1915	What are the requirements for Phase 1 and Phase 2 testing?
86.1917	How does in-use testing under this subpart relate to the emission-related warranty in Section 207(a)(1) of the Clean Air Act?
86.1920	What in-use testing information must I report to EPA?
86.1925	What records must I keep?
86.1930	What special provisions apply from 2005 through 2007?

86.1935 What special provisions may apply as a consequence of a delay in the accuracy margin report for portable emission measurement systems?

Appendix I to Subpart T—Sample Graphical Summary of NTE Emission Results

§ 86.1901 What testing requirements apply to my engines that have gone into service?

(a) If you manufacture diesel heavy-duty engines above 8500 lbs. GVWR that are subject to engine-based exhaust emission standards under this part, you must test them as described in this subpart. You must measure all emissions listed in § 86.1910(d) other than PM beginning in calendar year 2005 and you must measure PM emissions beginning in calendar year 2006. See §§ 86.1930 and 86.1935 for special provisions that may apply to manufacturers in the early years of this program.

(b) We may void your certificate of conformity for an engine family if you do not meet your obligations under this subpart. We may also void individual tests and require you to retest those vehicles or take other appropriate measures in instances where you have not performed the testing in accordance with the requirements described in this subpart.

(c) In this subpart, the term “you” refers to the certificate-holder for any engines subject to the requirements of this subpart.

(d) In this subpart, *round* means to round numbers according to NIST Special Publication 811 (incorporated by reference in § 86.1).

§ 86.1905 How does this program work?

(a) You must test in-use engines from the families we select. We may select the following number of engine families for testing, except as specified in paragraph (b) of this section:

(1) We may select up to 25 percent of your engine families in any calendar year, calculated by dividing the number of engine families you certified in the model year corresponding to the calendar year by four and rounding to the nearest whole number. We will consider only engine families with annual U.S.-directed production volumes above 1,500 units in calculating the number of engine families subject to testing each calendar year under the annual 25 percent engine family limit. In addition, for model year 2007 through 2009, identical engine families that are split into two subfamilies under § 86.007–15(m)(9) will count as only one engine family. If you have only three or fewer families that each exceed an annual U.S.-directed production volume of 1,500 units, or if you have no engine families

above this limit, we may select one engine family per calendar year for testing.

(2) Over any four-year period, we will not select more than the average number of engine families that you have certified over that four-year period (the model year when the selection is made and the preceding three model years), based on rounding the average value to the nearest whole number.

(b) If there is clear evidence of a nonconformity with regard to an engine family, we may select that engine family without counting it as a selected engine family under paragraph (a) of this section. We will consult with you in reaching a conclusion whether clear evidence of a nonconformity exists for any engine family. In general, there is clear evidence of a nonconformity regarding an engine family under this subpart in any of the following cases:

(1) The engine family was not remedied but is a carry-over from an engine family you tested under this subpart and was subsequently remedied based at least in part on the Phase 1 or Phase 2 testing outcomes described in § 86.1915.

(2) The engine family was not remedied but is a carry-over from an engine family that was remedied based on an EPA in-use testing program.

(c) We may select any individual engine family for testing, regardless of its production volume, as long as we do not select more than the number of engine families described in paragraph (a) of this section. We may select an engine family from the current model year or any previous model year, except that we will not select any engine families from model years before 2007 beginning in the following calendar years:

(1) 2007 for all emissions testing other than PM testing.

(2) 2008 for PM testing.

(d) You must complete all the required testing and reporting under this subpart within 18 months after we direct you to test a particular engine family. We will typically select engine families for testing and notify you in writing by June 30 of the applicable calendar year. You may ask for up to six months longer to complete Phase 2 testing if there is a reasonable basis for needing more time. In very unusual circumstances you may request an additional six months to complete Phase 2 testing.

(e) If you make a good-faith effort to access enough test vehicles to complete Phase 1 or Phase 2 testing requirements under this subpart for an engine family, but are unable to do so, you must ask us either to modify the testing

requirements for the selected engine family or, in the case of Phase 1 testing, to select a different engine family.

(f) After you complete the in-use testing requirements for an engine family that we selected for testing in a given calendar year, we may select that same family in a later year to evaluate the engine family's compliance closer to the end of its useful life. This would count as an additional engine-family selection under paragraph (a) of this section, except as described in paragraph (b) of this section.

(g) For any communication related to this subpart, contact the Engine Programs Group Manager (6405-J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

§ 86.1908 How must I select and screen my in-use engines?

(a) Once we direct you to do testing under this subpart, you must make arrangements to select test vehicles and engines that meet the following criteria:

(1) The engines must be representative of the engine family.

(2) The usage of the vehicles must be representative of typical usage for the vehicles' particular application.

(3) The vehicles come from at least two independent sources.

(4) The key vehicle/engine systems (e.g., power train, drive train, emission control) have been properly maintained and used.

(5) The engines have not been tampered with, rebuilt or undergone major repair that could be expected to affect emissions.

(6) The engines have not been misfueled. For example, an engine may be considered misfueled if operated on a biodiesel fuel blend that is either not listed as allowed or otherwise indicated to be an unacceptable fuel in the vehicle's owner or operator manual.

(7) The engines do not have an illuminated MIL or stored OBD trouble code that lead you to reject the vehicle from the test program as described in § 86.1910(b)(2).

(8) The vehicles are likely to operate for at least three hours (excluding idle) over a complete shift-day, as described in § 86.1910(g).

(9) The vehicles have not exceeded the applicable useful life, in miles or years (see subpart A of this part); you may otherwise not exclude engines from testing based on their age or mileage.

(10) The vehicle has appropriate space for safe and proper mounting of the PEMS equipment.

(b) You must keep any records of a vehicle's maintenance and use history you obtain from the owner or operator,

as required by § 86.1925. You must report the engine's maintenance and use history and information related to the OBD system, as described in § 86.1920.

(c) You must notify us before rejecting a candidate vehicle for reasons other than failing to meet the acceptance criteria in paragraph (a) of this section. A candidate vehicle is any prospective vehicle you have identified to potentially fulfill your testing requirements under this subpart. Include your reasons for rejecting each vehicle. If an owner declines to participate in the test program, you may reject the vehicle without prior notification. Such a rejection must be reported as described in § 86.1920. We may allow you to replace the rejected vehicle with another candidate vehicle to meet your testing requirements for the specific engine family.

(d) You must report when, how, and why you reject candidate vehicles, as described in § 86.1920.

§ 86.1910 How must I prepare and test my in-use engines?

(a) You must limit maintenance to what is in the owners manual for engines with that amount of service and age. For anything we consider an adjustable parameter (see § 86.094–21(b)(1)(ii) and § 86.094–22(e)), you may adjust that parameter only if it is outside of its adjustable range. You must then set the adjustable parameter to the midpoint of its adjustable range or your recommended setting, unless we approve your request to do otherwise. You must receive permission from us before adjusting anything not considered to be an adjustable parameter. You must keep records of all maintenance and adjustments, as required by § 86.1925. You must send us these records, as described in § 86.1920(b)(3)(x), unless we instruct you not to send them.

(b) You may treat a vehicle with an illuminated MIL or stored trouble code as follows:

(1) If the length of MIL illumination or trouble code storage is consistent with proper maintenance and use, either test the prospective test vehicle as received or repair the vehicle before testing. If you elect to repair the vehicle/engine, but ultimately determine that repairs cannot be completed in a timely manner, you may reject the vehicle from the test program and replace it with another vehicle. If you repair or reject the vehicle, you must describe the MIL or trouble code information in your report under § 86.1920.

(2) If the length of MIL illumination or trouble code storage is inconsistent with proper maintenance and use, either

test the prospective test vehicle as received, repair the vehicle before testing, or reject the vehicle from the test program and replace it with another vehicle. If you repair or reject the vehicle, you must describe the MIL or trouble code information in your report under § 86.1920.

(3) If a MIL is illuminated or a trouble code is set during an in-use test, do one of the following:

(i) Stop the test, repair the vehicle, and restart the testing. In this case, only the portion of the full test results without the MIL illuminated or trouble code set would be used in the vehicle-pass determination as described in § 86.1912. Describe the MIL or trouble code information in your report under § 86.1920.

(ii) Stop the test, repair the vehicle, and initiate a new test. In this case, only the post-repair test results would be used in the vehicle-pass determination as described in § 86.1912. Describe the MIL or trouble code information in your report under § 86.1920.

(iii) If three hours of non-idle operation have been accumulated prior to the time a MIL is illuminated or trouble code set, stop the test and use the accumulated test results in the vehicle-pass determination as described in § 86.1912.

(iv) If three hours of non-idle operation have not been accumulated prior to the time a MIL is illuminated or trouble code is set, and you elect to repair the vehicle/engine, but ultimately determine that repairs cannot be completed in a timely manner, you may reject the vehicle from the test program and replace it with another vehicle. If you repair or reject the vehicle, you must describe the MIL or trouble code information in your report under § 86.1920.

(c) Use appropriate fuels for testing, as follows:

(1) You may use any diesel fuel that meets the specifications for No. 2-D S500 or No. 2-D S15 in ASTM D 975 (incorporated by reference in § 86.1), as required in the calendar year that in-use testing occurs.

(2) You may use any biodiesel fuel blend that is either expressly allowed or not otherwise indicated as an unacceptable fuel in the vehicle's owner or operator manual or in the engine manufacturer's published fuel recommendations.

(3) You may drain a prospective test vehicle's fuel tank(s) and refill the tank(s) with diesel fuel conforming to ASTM D 975 specifications described in paragraph (c)(1) of this section.

(4) Any fuel that is added to the fuel tank(s) of a prospective test vehicle, or

during an in-use test, must be purchased at a local retail establishment near the site of vehicle procurement or screening, or along the test route. Alternatively, the fuel may be drawn from a central fueling source, provided that the fuel used is representative of that which is commercially available in the area where the vehicle is operated.

(5) No post-refinery fuel additives are allowed, except that one or more specific fuel additives may be used during in-use testing if you can document that the owner/operator of the prospective test vehicle has a history of normally using the fuel treatment(s), and the fuel additive(s) is not prohibited in the vehicle's owner or operator manual or in the engine manufacturer's published fuel-additive recommendations.

(6) You may take fuel samples from test vehicles to ensure that appropriate fuels were used during in-use testing. If a vehicle fails the vehicle-pass criteria and you can show that an inappropriate fuel was used during the failed test, that particular test may be voided. You may drain the vehicle's fuel tank(s) and refill the tank(s) with diesel fuel conforming to the ASTM D 975 specifications described in paragraph (c)(1) of this section. You must report any fuel tests that are the basis of voiding a test in your report under § 86.1920.

(d) You must test the selected engines while they remain installed in the vehicle. Use portable emission-sampling equipment and field-testing procedures referenced in § 86.1375. Measure emissions of THC, NMHC (by any method specified in 40 CFR part 1065, subpart J), CO, NO_x, PM (as appropriate), O₂, and CO₂.

(e) For Phase 1 testing, you must test the engine under conditions reasonably expected to be encountered during normal vehicle operation and use consistent with the general NTE requirements described in § 86.1370–2007(a). For the purposes of this subpart, normal operation and use would generally include consideration of the vehicle's normal routes and loads (including auxiliary loads such as air conditioning in the cab), normal ambient conditions, and the normal driver.

(f) For Phase 2 testing, we may give specific directions, as described in § 86.1915(c)(2).

(g) Once an engine is set up for testing, test the engine for at least one shift-day. To complete a shift-day's worth of testing, start sampling at the beginning of a shift and continue sampling for the whole shift, subject to the calibration requirements of the portable emissions measurement

systems. A shift-day is the period of a normal workday for an individual employee. If the first shift-day of testing does not involve at least 3 hours of accumulated non-idle operation, repeat the testing for a second shift-day. If the second shift-day of testing also does not result in at least 3 hours of accumulated non-idle operation, you may choose whether or not to continue testing with that vehicle. If after two shift-days you discontinue testing before accumulating 3 hours of non-idle operation on either day, evaluate the valid NTE samples as described in § 86.1912 and include the data in the reporting and record keeping requirements specified in §§ 86.1920 and 1925. Count the engine toward meeting your testing requirements under this subpart and use the data for deciding whether additional engines must be tested under the applicable Phase 1 or Phase 2 test plan.

(h) You have the option to test longer than the two shift-day period described in paragraph (g) of this section.

(i) You may count a vehicle as meeting the vehicle-pass criteria described in § 86.1912 if a shift day of testing or two-shift days of testing (with the requisite non-idle/idle operation time as in paragraph (g) of this section), or if the extended testing you elected under paragraph (h) of this section does not generate a single valid NTE sampling event, as described in § 86.1912(b). Count the engine towards meeting your testing requirements under this subpart.

(j) You may ask us to waive measurement of particular emissions if you can show that in-use testing for such emissions is not necessary.

§ 86.1912 How do I determine whether an engine meets the vehicle-pass criteria?

In general, the average emissions for each regulated pollutant must remain at or below the NTE threshold in paragraph (a) of this section for at least 90 percent of the valid NTE sampling events, as defined in paragraph (b) of this section. For 2007 through 2009 model year engines, the average emissions from every NTE sampling event must also remain below the NTE thresholds in paragraph (f)(2) of this section. Perform the following steps to determine whether an engine meets the vehicle-pass criteria:

(a) Determine the NTE threshold for each pollutant subject to an NTE standard by adding all three of the following terms and rounding the result to the same number of decimal places as the applicable NTE standard:

(1) The applicable NTE standard.

(2) The in-use compliance testing margin specified in § 86.007–11(h), if any.

(3) An accuracy margin for portable in-use equipment when testing is performed under the special provisions of § 86.1930, depending on the pollutant, as follows:

(i) NMHC: 0.17 grams per brake horsepower-hour.

(ii) CO: 0.60 grams per brake horsepower-hour.

(iii) NO_x: 0.50 grams per brake horsepower-hour.

(iv) PM: 0.10 grams per brake horsepower-hour.

(4) Accuracy margins for portable in-use equipment for testing not performed under the special provisions of § 86.1930, to be determined by rulemaking as indicated in § 86.1935.

(b) For the purposes of this subpart, a valid NTE sampling event consists of at least 30 seconds of continuous operation in the NTE control area. An NTE event begins when the engine starts to operate in the NTE control area and continues as long as engine operation remains in this area (see § 86.1370). When determining a valid NTE sampling event, exclude all engine operation in approved NTE limited testing regions under § 86.1370–2007(b)(6) and any approved NTE deficiencies under § 86.007–11(a)(4)(iv).

Engine operation in the NTE control area of less than 30 contiguous seconds does not count as a valid NTE sampling event; operating periods of less than 30 seconds in the NTE control area, but outside of any allowed deficiency area or limited testing region, will not be added together to make a 30 second or longer event. Exclude any portion of a sampling event that would otherwise exceed the 5.0 percent limit for the time-weighted carve-out defined in § 86.1370–2007(b)(7). For EGR-equipped engines, exclude any operation that occurs during the cold-temperature operation defined by the equations in § 86.1370–2007(f)(1).

(c) Calculate the average emission level for each pollutant over each valid NTE sampling event as specified in 40 CFR part 1065, subpart G, using each NTE event as an individual test interval. This should include valid NTE events from all days of testing.

(d) Calculate a time-weighted vehicle-pass ratio (R_{pass}) for each pollutant. To do this, first sum the time from each valid NTE sampling event whose average emission level is at or below the NTE threshold for that pollutant, then divide this value by the sum of the engine operating time from all valid NTE events for that pollutant. Round the resulting vehicle-pass ratio to two decimal places.

(1) Calculate the time-weighted vehicle-pass ratio for each pollutant as follows:

$$R_{\text{pass}} = \frac{\sum_{m=1}^{n_{\text{pass}}} t}{\sum_{k=1}^{n_{\text{total}}} t}$$

Where:

n_{pass} = the number of valid sampling events for which the average emission level is at or below the NTE threshold.

n_{total} = the total number of valid NTE sampling events.

(2) For both the numerator and the denominator of the vehicle-pass ratio, use the smallest of the following values for determining the duration, t , of any NTE sampling event:

(i) The measured time in the NTE control area that is valid for an NTE sampling event.

(ii) 600 seconds.

(iii) 10 times the length of the shortest valid NTE sampling event for all testing with that engine.

(e) The following example illustrates how to select the duration of NTE sampling events for calculations, as described in paragraph (d) of this section:

NTE sample	Duration of NTE sample (seconds)	Duration Limit Applied?	Duration used in calculations (seconds)
1	45	No	45
2	168	No	168
3	605	Yes. Use 10 times shortest valid NTE.	450
4	490	Yes. Use 10 times shortest valid NTE.	450
5	65	No	65

(f) Engines meet the vehicle-pass criteria under this section if they meet both of the following criteria:

(1) The vehicle-pass ratio calculated according to paragraph (d) of this section must be at least 0.90 for each pollutant.

(2) For model year 2007 through 2009 engines, emission levels from every valid NTE sampling event must be less than 2.0 times the NTE thresholds calculated according to paragraph (a) of this section for all pollutants, except that engines certified to a NO_x FEL at or below 0.50 g/bhp-hr may meet the vehicle-pass criteria for NO_x if measured NO_x emissions from every valid NTE sample are less than either 2.0 times the NTE threshold for NO_x or 2.0 g/bhp-hr, whichever is greater.

§ 86.1915 What are the requirements for Phase 1 and Phase 2 testing?

For all selected engine families, you must do the following:

(a) To determine the number of engines you must test from each selected engine family under Phase 1 testing, use the following criteria:

(1) Start by measuring emissions from five engines using the procedures described in § 86.1375. If all five engines comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, you may stop testing. This completes your testing requirements under this subpart for the applicable calendar year for that engine family.

(2) If one of the engines tested under paragraph (a)(1) of this section fails to comply fully with the vehicle-pass criteria in § 86.1912 for one or more pollutants, test one more engine. If this

additional engine complies fully with the vehicle-pass criteria in § 86.1912 for all pollutants, you may stop testing. This completes your testing requirements under this subpart for the applicable calendar year for that engine family.

(3) If your testing results under paragraphs (a)(1) and (2) of this section do not satisfy the criteria for completing your testing requirements under those paragraphs for all pollutants, test four additional engines so you have tested a total of ten engines.

(4) An engine that fails to fully comply with the vehicle-pass criteria in § 86.1912 for any pollutant does not comply with the vehicle-pass criteria in § 86.1912 for the purposes of determining the number of engines to test from each selected engine family under this paragraph.

(b) For situations where a total of ten engines must be tested under paragraph (a)(3) of this section, the results of Phase 1 testing lead to the following outcomes:

(1) If at least eight of the ten engines comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, you may stop testing. This completes your testing requirements under this subpart for the applicable calendar year for that engine family.

(2) If six or seven vehicles from the Phase 1 sample of test vehicles comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, then you must engage in follow-up discussions with us to determine whether any further testing (including Phase 2 testing), data submissions, or other actions may be warranted.

(3) If fewer than six of the ten engines tested under paragraph (a) of this section comply fully with the vehicle-pass criteria in § 86.1912 for all pollutants, we may require you to initiate Phase 2 testing, as described in paragraph (c) of this section.

(4) You may under any circumstances elect to conduct Phase 2 testing following the completion of Phase 1 testing. All the provisions of paragraph (c) of this section apply to this Phase 2 testing.

(c) If you perform Phase 2 testing for any reason, test your engines as follows:

(1) You must test ten additional engines using the test procedures described in § 86.1375, unless we require you to test fewer vehicles.

(2) We may give you any of the following additional directions in selecting and testing engines:

(i) We may require you to select a certain subset of your engine family. This may include, for example, engines within a specific power range, engines used in particular applications, or engines installed in vehicles from a particular manufacturer.

(ii) We may direct you to test engines in a way that simulates the type of driving and ambient conditions associated with high emissions experienced during Phase 1 testing.

(iii) We may direct you to test engines in a specific state or any number of contiguous states.

(iv) We may direct you to select engines from the same sources used for previous testing, or from different sources.

(v) We may require that you complete your testing and reporting under Phase 2 within a certain period. This period may not be shorter than three months and must allow a reasonable amount of time to identify and test enough vehicles. We would generally expect this testing to be completed within the

overall time period specified in § 86.1905(d).

§ 86.1917 How does in-use testing under this subpart relate to the emission-related warranty in Section 207(a)(1) of the Clean Air Act?

(a) An exceedance of the NTE found through the in-use testing program under this subpart is not by itself sufficient to show a breach of warranty under Clean Air Act section 207(a)(1) (42 U.S.C. 7541(a)(1)). A breach of warranty would also require one of the following things:

(1) That, at the time of sale, the engine or vehicle was designed, built, and equipped in a manner that does not conform in all material respects reasonably related to emission controls to the engine as described in the application for certification and covered by the certificate; or

(2) A defect in materials or workmanship of a component causes the vehicle or engine to fail to conform to the applicable regulations for its useful life.

(b) To the extent that in-use NTE testing does not reveal such a material deficiency at the time of sale in the design or manufacture of an engine compared with the certified engine, or a defect in the materials and workmanship of a component or part, test results showing an exceedance of the NTE by itself would not show a breach of the warranty under 42 U.S.C. 7541(a)(1).

§ 86.1920 What in-use testing information must I report to EPA?

(a) Send us electronic reports at *inuse@epa.gov* using an approved information format. If you want to use a different format, send us a written request with justification.

(b) Within 30 days after the end of each calendar quarter, send us reports containing the test data from each engine for which testing was completed during the calendar quarter. Alternatively, you may separately send us the test data within 30 days after you complete testing for an engine. Once you send us information under this section, you need not send that information again in later reports. Prepare your test reports as follows:

(1) For each engine family, describe how you recruited vehicles. Describe how you used any criteria or thresholds to narrow your search or to screen individual vehicles.

(2) Include a summary of the candidate vehicles you have rejected and the reasons you rejected them, whether you base the rejection on the criteria in § 86.1908(a) or anything else.

If you rejected a candidate vehicle due to misfueling, included the results of any fuel sample tests.

(3) For the test vehicle, include the following background information:

(i) The EPA engine-family designation, and the engine's model number, total displacement, and power rating.

(ii) The applicable test phase (Phase 1 or Phase 2).

(iii) The date EPA selected the engine family for testing.

(iv) The vehicle's make and model and the year it was built.

(v) The vehicle identification number and engine serial number.

(vi) The vehicle's type or application (such as delivery, line haul, or dump truck). Also, identify the type of trailer, if applicable.

(vii) The vehicle's maintenance and use history.

(viii) The known status history of the vehicle's OBD system and any actions the owner or operator took to address OBD trouble codes or MIL illumination over the vehicle's lifetime.

(ix) Any OBD codes or MIL illumination that occur after you accept the vehicle for in-use testing under this subpart.

(x) Any steps you take to maintain, adjust, modify, or repair the vehicle or its engine to prepare for or continue testing, including actions to address OBD trouble codes or MIL illumination. Include any steps you took to drain and refill the vehicle's fuel tank(s) to correct misfueling, and the results of any fuel test conducted to identify misfueling.

(4) For each test, include the following data and measurements:

(i) The date and time of testing, and the test number.

(ii) Shift-days of testing (*see* § 86.1910 (g)), duration of testing, and the total hours of non-idle operation.

(iii) Route and location of testing. You may base this description on the output from a global-positioning system.

(iv) The steps you took to ensure that vehicle operation during testing was consistent with normal operation and use, as described in § 86.1910(e).

(v) Fuel test results, if fuel was tested under § 86.1908 or 86.1910.

(vi) The vehicle's mileage at the start of the test. Include the engine's total lifetime hours of operation, if available.

(vii) Ambient temperature, dewpoint, and atmospheric pressure at the start and finish of each valid NTE event.

(viii) The number of valid NTE events (*see* § 86.1912(b)).

(ix) Average emissions for each pollutant over each valid NTE event. Describe the method you used to determine NMHC as specified in 40 CFR

part 1065, subpart J. See Appendix I of this subpart for an example of graphically summarizing NTE emission results.

- (x) Exhaust-flow measurements.
- (xi) Vehicle-pass ratios (see § 86.1912(d)).
- (xii) Recorded one-hertz test data, including, but not limited to, the following parameters:
 - (A) Ambient temperature.
 - (B) Ambient pressure.
 - (C) Ambient humidity.
 - (D) Altitude.
 - (E) Emissions of THC, NMHC, CO, CO₂ or O₂, NO_x, and PM (as appropriate). Report results for CH₄ if it was measured and used to determine NMHC.
 - (F) Differential back-pressure of any PEMS attachments to vehicle exhaust.
 - (G) Exhaust flow.
 - (H) Exhaust aftertreatment temperatures, if the engine meets the specifications of § 86.1370–2007(g).
 - (I) Engine speed.
 - (J) Engine brake torque.
 - (K) Engine coolant temperature.
 - (L) Intake manifold temperature.
 - (M) Intake manifold pressure.
 - (N) Throttle position.
- (O) Any parameter sensed or controlled in order to modulate the emission-control system or fuel-injection timing.
- (5) For each engine family, identify the applicable requirements, as follows:
 - (i) The applicable NTE thresholds.
 - (ii) Vehicle and engine information needed to identify the limited testing regions under § 86.1370–2007(b)(6) and (7).
 - (iii) Vehicle and engine information needed to identify any approved NTE deficiencies under § 86.007–11(a)(4)(iv).

(6) Include the following summary information after you complete testing with the engine:

- (i) State whether the engine meets the vehicle-pass criteria in § 86.1912(f).
- (ii) Identify how many engines you have tested from the applicable engine family and how many engines still need to be tested.

(iii) Identify how many engines from an engine family have passed the vehicle-pass criteria and the number that have failed the vehicle-pass criteria (see § 86.1912(f)).

(iv) If possible, state the outcome of Phase 1 testing for the engine family based on the criteria in § 86.1915(b).

(c) In your reports under this section, you must do all the following:

- (1) Include results from all emission testing required under this subpart.
- (2) Describe if any testing or evaluations were conducted to determine why a vehicle failed the vehicle-pass criteria in § 86.1912.

(3) Describe the purpose of any diagnostic procedures you conduct.

(4) Describe any instances in which the OBD system illuminated the MIL or set trouble codes. Also describe any approved actions taken to address the trouble codes or MIL.

(5) Describe any instances of misfueling, the approved actions taken to address the problem, and the results of any associated fuel sample testing.

(6) Describe any incomplete or invalid tests that were conducted under this subpart.

(d) Send us an electronic notification at inuse@epa.gov describing any voluntary vehicle/engine emission evaluation testing you intend to conduct with portable in-use measurement systems on the same engine families that are being tested under this subpart, from the time that engine family was selected for in-use testing under § 86.1905 until the final results of all testing for that engine family are reported to us under this section.

(e) Send us an electronic notification at application-ci_cert@epa.gov within 15 days after your initial review of the test data for a selected engine family indicates that three engines in Phase 1 testing have failed to comply with the vehicle-pass criteria. Similarly, send us an electronic notification at the above electronic address within 3 days after your initial review of the test data for a selected engine family indicates that any engine in Phase 2 testing failed to comply with the vehicle-pass criteria.

(f) We may ask you to send us less information in your reports than we specify in this section.

(g) We may require you to send us more information to evaluate whether your engine family meets the requirements of this part, or to help inform potential decisions concerning Phase 2 testing under § 86.1915.

§ 86.1925 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep the following paper or electronic records of your in-use testing for five years after you complete all the testing required for an engine family:

- (1) Keep a copy of the reports described in § 86.1920.
- (2) Keep any additional records, including forms you create, related to any of the following:

- (i) The procurement and vehicle-selection process described in § 86.1908, including the vehicle owner's name, address, phone number, and e-mail address.

(ii) Pre-test maintenance and adjustments to the engine performed under § 86.1910.

(iii) Test results for all void, incomplete, and voluntary testing described in § 86.1920.

(iv) Evaluations to determine why a vehicle failed the vehicle-pass criteria described in § 86.1912.

(3) Keep a copy of the relevant calibration results required by 40 CFR part 1065.

§ 86.1930 What special provisions apply from 2005 through 2007?

We may direct you to test engines under this subpart for emissions other than PM in 2005 and 2006, and for PM emissions in 2006 and 2007. In these interim periods, all the provisions of this subpart apply, with the following exceptions:

(a) We will select engine families for testing of emissions other than PM only when the manufacturer's Statement of Compliance specifically describes the family as being designed to comply with NTE requirements.

(b) If you participate in the test program described in § 86.1935(a), you may limit your testing under Phase 1 to a maximum of five vehicles per selected engine family.

(c) We will not direct you to do the Phase 2 testing in § 86.1915(c), regardless of measured emission levels.

(d) For purposes of calculating the NTE thresholds under § 86.1912(a) for any 2006 and earlier model year engine that is not subject to the emission standards in § 86.007–11, determine the applicable NTE standards as follows:

(1) If any numerical NTE requirements specified in the terms of any consent decree apply to the engine family, use those values as the NTE standards for testing under this subpart.

(2) If a numerical NTE requirement is not specified in a consent decree for the engine family, the NTE standards are 1.25 times the applicable FELs or the applicable emission standards specified in § 86.004–11(a)(1) or § 86.098–11(a)(1).

(e) In the report required in § 86.1920(b), you must submit the deficiencies and limited testing region reports (see § 86.007–11(a)(4)(iv) and § 86.1370–2007(b)(6) and (7)) for 2006 and earlier model year engines tested under this section.

(f) Testing under this section may be extended as described in § 86.1935(d).

§ 86.1935 What special provisions may apply as a consequence of a delay in the accuracy margin report for portable emission measurement systems?

(a) A memorandum entitled, "Memorandum of Agreement, Program

to Develop Emission Measurement Accuracy Margins for Heavy-Duty In-Use Testing” describes a test program for establishing measurement accuracy margins related to testing under § 86.1912(a)(4). This document is available at <http://www.epa.gov/otaq/hd-hwy.htm> or at the mailing address specified in § 86.1905(g).

(b) If there is a delay in receiving the written final report for either gaseous emissions or PM emissions described in the agreement referenced in paragraph (a) of this section, and that delay is not attributable to engine manufacturers failing to meet their commitments under that agreement, the following provisions apply for the respective pollutant type (gaseous or PM emissions):

(1) If the delay is 3 months or less, we will delay the designation of engine families for testing in the applicable calendar year, as described in § 86.1905(d), by the same number of additional whole months (rounded up) needed to complete the report.

(2) If the delay is more than 3 months but less than 12 months, we may continue to designate engine families for testing under the special provisions described in § 86.1930 for an additional year.

(3) If the delay is longer than 12 months, the following approach is established for the applicable calendar year:

(i) If the delay is longer than 12 months but less than 15 months, we will follow the steps described in paragraph (b)(1) of this section.

(ii) If the delay is longer than 15 months but less than 24 months, we will follow the steps described in paragraph (b)(2) of this section for the applicable calendar year.

(iii) If the delay is longer than 24 months, the applicable gaseous or PM emission testing program will go into abeyance.

(c) If one or more engine manufacturers fail to meet commitments under the agreement described in

paragraph (a) of this section and such a failure results in a delay in the final written report for either gaseous emissions (NO_x, NMHC and CO) or PM emissions described in the agreement, the following provisions apply for the respective pollutant type (gaseous or PM emissions):

(1) If the delay is 3 months or less, we will delay the designation of engine families for testing in the applicable calendar year, as described in § 86.1905(d), by the same number of additional whole months (rounded up) needed to complete the report.

(2) If the delay is more than 3 months but less than 12 months, the provisions of this subpart will not apply for the otherwise applicable calendar year (2007 for gaseous emissions and 2008 for PM emissions), subject to the following provisions:

(i) We may identify the number of engine families that would otherwise have been designated for testing in that calendar year for the delayed pollutant type and direct manufacturers to test that number of engine families under the special provisions described in § 86.1930 and additionally in any later calendar year once the provisions of this subpart begin for that pollutant type, without counting those accumulated engine families toward the allowable annual cap on the number of engine families specified in § 86.1905.

(ii) A delay for PM emissions would not be a sufficient basis for delaying the program for gaseous emissions. Similarly, a delay for gaseous emissions would not be a sufficient basis for delaying the program for PM emissions.

(iii) The normal 18-month period for testing and reporting results specified in § 86.1905(d) is extended to 24 months for any accumulated engine-family designation described in paragraph (c)(2)(i) of this section. The additional time extensions for testing and reporting results as specified in § 86.1905(d) also apply.

(3) If the delay is longer than 12 months, the following approach is established for the applicable calendar year:

(i) If the delay is longer than 12 months but less than 15 months, we will follow the steps described in paragraph (c)(1) of this section.

(ii) If the delay is longer than 15 months but less than 24 months, we will follow the steps described in paragraph (c)(2) of this section for the applicable calendar year.

(iii) If the delay is longer than 24 months, we will continue to follow the steps described in paragraphs (c)(1) and (c)(2) of this section, including the accumulation of engine families for testing, until the report is received and the fully implemented program commences.

(d) We may determine that any individual manufacturer's failure under paragraph (c) of this section constitutes a failure by all engine manufacturers.

(e) Nothing in this section affects our ability to select engines from any model year beginning with model year 2007.

(f) If we determine that fundamental technical problems with portable in-use PM measurement systems are not resolvable in a reasonable time, the provisions of this subpart, as they apply to PM, will go into abeyance until we determine that suitable emission-measurement devices are available for in-use testing.

(g) As described in § 86.1930(b), engine manufacturers contributing to the test programs described in the agreement referenced in paragraph (a) of this section may limit their testing under the special provisions described in § 86.1930 to five engines in each selected engine family.

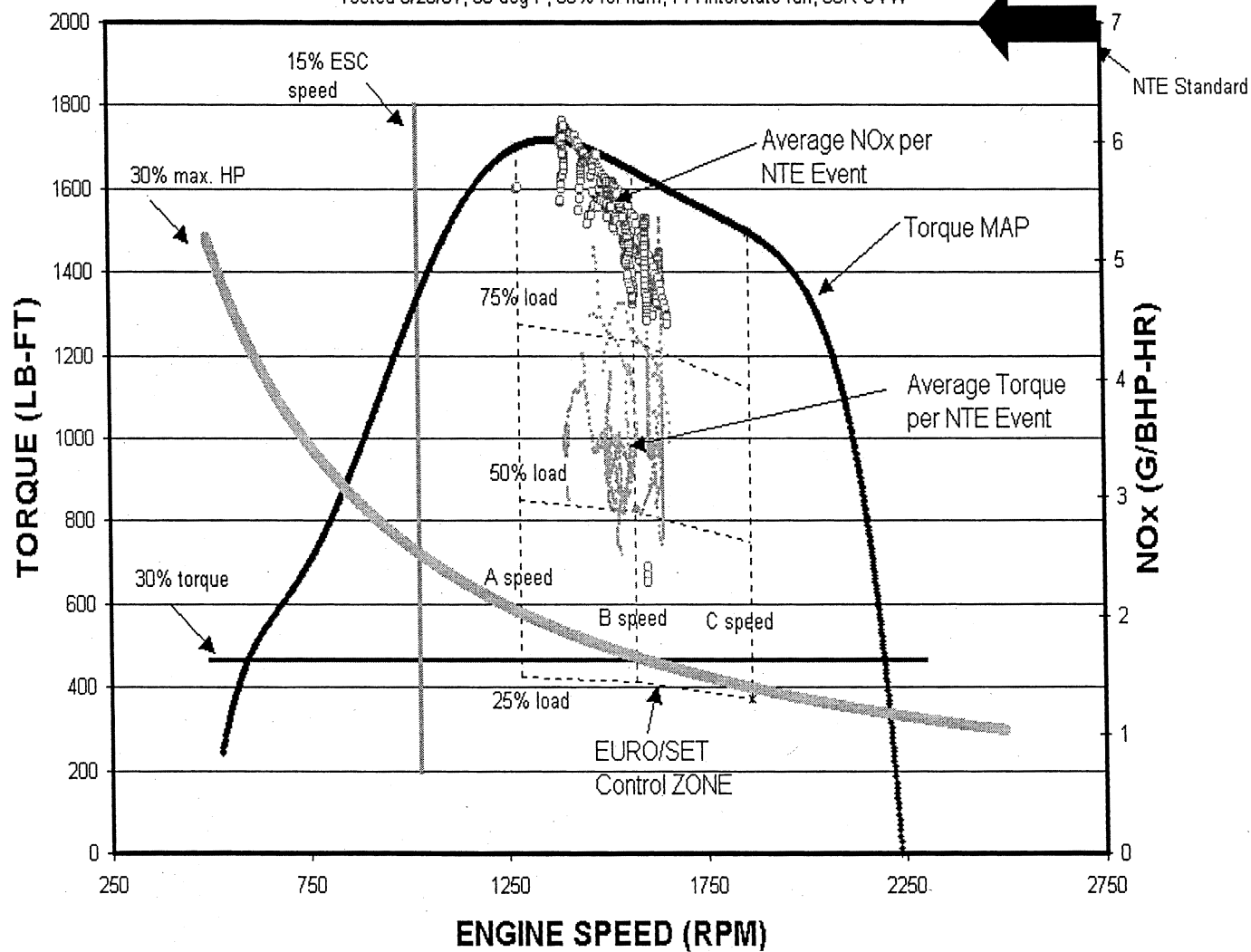
Appendix I to Subpart T—Sample Graphical Summary of NTE Emission Results

The following figure shows an example of a graphical summary of NTE emission results:

NTE NOx - ENGINE #4 (HHDD)

Appendix 1 -- Example
NTE Results Plot

Tested 3/20/01, 55 deg-F, 60% rel hum, PA interstate run, 30K GVW



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